Supreme Court, U.S.
FILED

OCT 1 2 2000

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No. 00A229 00 993

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2000

EDWARD R. BUTLER, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

On Petition for Writ of Certiorari to the

United States Court of Appeals

For the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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118 pp

QUESTIONS PRESENTED

QUESTION I

Whether defendant's 5th and 14th Amendment rights were violated after being compelled pursuant to Bankruptcy Code and threat of incarceration to testify regarding his inability to comply with Turn Over Order, then subsequently using that testimony to convict defendant in a criminal case.

QUESTION II

Whether the issuance of a Summary Contempt Order without an enforcement notice, hearing and order violated defendant's rights under the 5th and 14th Amendments.

QUESTION III

Whether the transactions charged in counts two through six could not, as a matter of Law, constitute money Laundering, in violation of 18 USC §1957 as the monetary transaction alleged in those counts did not involve the proceeds of a specified criminal activity of Bankruptcy concealment, especially where there was no concealment.

QUESTION IV

Whether the Indictment was defective on its face so as to, deny the Petitioner his due process guaranteed under the Fifth, Fourteenth, and Sixth Amendment.

LIST OF ALL PARTIES

Petitioner herein is Edward R. Butler.

The Claimants-Appellants below is the United States of America, Respondent

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II. Whether the issuance of a Summary Contempt Order without an enforcement notice, hearing and order violated defendant's rights under the 5th and 14th Amendments.

III. Whether the transactions charged in counts two through six could not, as a matter of Law, constitute money Laundering, in violation of 18 USC §1957 as the monetary transaction alleged in those counts did not involve the proceeds of a specified criminal activity of Bankruptcy concealment, especially where there was no concealment.

IV. Whether the Indictment was defective on its face so as to deny the Petitioner his due process guaranteed under the Fifth Amendment and right

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TABLE OF AUTHORITIES

CASES

Allen v Curry,
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Coghlan v United States,
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Daniel Forder v United States,
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Howard v Moore,
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Kastigar v United States,
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Lefkowitz v Cunningham,
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Margarita Fuentes v Robert L. Shiver,
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Maggio v Zeitz,
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United States v Rylander,
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United States v Russell,
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United States v Rutgard,
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United States v Savage,
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United States v Schmidt,
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United States v Seidman,
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United States v Walters,
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United States v Williams,
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United States v Yarbrough,
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United States v Ward,
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Williams v Withrow,
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Zemina v Solem,
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United States v DeFries,
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United States v Evans,
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United States v France,
164 F.3d 203 (4th Cir. 1990)
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United States v Grandos,
117 F.3d 1089 (8th Cir. 1997)..... .....

United States v Hall,
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United States v Heaps,
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United States v Johnson,
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United States v Lovett,
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United States v McManus,
23 F.3d 878 (4th Cir. 1994).....

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United States v Morgan,
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IN THE SUPREME COUKT OF THE UNITED STATES

OCTOBER TERM, 2000

EDWARD R. BUTLER, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE 4TH CIRCUIT

JUDGMENT BELOW

The judgment submitted for review is the opinion of the United States Court of Appeals for the Fourth Circuit in United States v. Butler, 99-4153 (4th Cir. 2000). A copy is attached as Appendix A.

JURISDICTION

The Fourth Circuit issued its opinion in this case on May 3, 2000. The Fourth Circuit Granted en banc Rehearing on June 14, 2000, and issued its denial on June 14, 2000. On September 13, 2000, the United States Supreme Court granted an extension to file Writ of Certiorari on October 12, 2000, and so is filed here upon.

This Court has jurisdiction to review the Fourth Circuit's opinion pursuant to 28 U.S.C § 1254(1).

CONSTITUTIONAL PROVISIONS AND FEDERAL STATUE INVOLVED

The Due Process Clause of the Fifth Amendment to the United States Constitution provides:

5th Amendment

no person shall be compelled in any criminal case to be a witness against himself.

6th Amendment

Constitution provide:

in all criminal prosecution, the accused shall enjoy the right to a trial by an impartial jury…and to be informed of the nature and cause of the accusation.

14th Amendment

Constitution provide:

….nor shall state deprive any person of life, liberty, or property without due process of law.

Title 18, United States Codes, Section 152 provide in pertinent part:

§152. A person who-

(1) knowingly and fraudulently conceals from a custodian, trustee, marshal, or other officer of the Court charged with the control or custody of property, or, in connection with a case under title 11, from creditors or the United States Trustee, any property belonging to the estate of a debtor,

(2) knowingly and prudently makes a false oath or account in or in relation to any case under title 11;

(3) knowingly and fraudulently make a false declaration, certification, verification, or statement

> under penalty of perjury as permitted under section 1746 of Title 28, in or in relation to any case under title 11;
>
> Penalties
>
> shall be fined under this title, imprisoned not more than 5 years, or both.

Title 18 United States Code 1957 provide in pertinent part:

> (a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).
>
> (b) (1) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18 United States Code, or imprisonment for not more than ten years or both.
>
> (2) The Court may impose an alternate fine to that imposable under paragraph (1) of not more than twice the amount of criminally derived property involved in the transaction.

REASON WHY THIS COURT SHOULD GRANT WRIT OF CERTIORARI

This case squarely presents Constitutional issues of this Court reversed in Apprendi, Fuentes, Simmons, McConell, and Maggio.

This case also presents Constitutional issues that are seeming conflicting in cases addressing the 18 USC §1957 money laundering transaction. The inter-circuit question this Court must settle is when does money from the alleged act become "proceed"

under Title 18 USC §? After it is completed or a completed phase of a specified unlawful activity?

Congress did not define "proceeds" and Congress did not use the term "completed phase" in its construction of Title 18 USC §1957. Circuits are split on this issue and need the guidance of this Court as this element is an issue that Courts are attempting to distinguish, explain, and reconcile, that leave questions which lead Courts to wonder about the precise scope of its holding.

This Court should grant certiorari for two reasons. First, the issue is one of importance to thousands of Americans charged with Money Laundering in federal and state Courts each year. Second, the issue is of almost as much to thousands of judges who must not only sentence drug defendants but anyone who has been charged with a crime of Money Laundering transaction with the "proceeds". The Circuit Courts have not found guidance among its sister circuits. Additionally, not to address the issue in this case under Apprendi, Fuentes, Simmons, McConnell, and Maggio would under mind the public confidence in the integrity of the Judicial system.

STATEMENT OF CASE

This case has its geniuses in the issuance of an expert two (2) day turn over order by the bankruptcy Court issued 10-16-91. Edward Butler, the defendant filed bankruptcy on 7-25-90. The defendant hired attorney Robert Scarlett to represent him. As part of his bankruptcy, the defendant listed asset of $650,000. A defaulted **Indemnity deed of trust** take back loan of a $2,000,000 sale of Nutter and Son Funeral Home to Rhema Inc. and Showell. Another

party, James Adkins wanted to buy the funeral home. Adkins hired Butler's lawyer Scarlett to acquire the funeral home. Scarlett filed motion in the Rhema and Showell case (Showell was in bankruptcy also). The party's agreed to a compromise and settlement of $350,000 in front of bankruptcy Judge Darby who was handling both bankruptcy matters. The settlement called for Adkins to receive a share of the money since he was the procuring cause, and all payments were to be placed in escrow account with the final payments to be paid at settlement. Both lawyers were signatories on the account.

Showell defaulted; Scarlett filed a motion to set aside compromise and settlement on 7-17-91. Bankruptcy Judge James Schneider, who had assigned defendants case and Rhema and Showell case to himself signed an exparte order denying defendant's motion to set aside compromise and settlement, and **ordered defendant Butler and Rhema and Showell to go to settlement.** Scarlett filed motion to set aside the exparte order.

On 10-15-91, the settlement was held at Harbor Bank and the defendant went to the settlement to inform all parties that Rhema and Showell has defaulted, and that he was not prepared to settle because of it and in fact, he wanted to take over the funeral home. But the defendant arrived at the Harbour Bank, he met counselor Scarlett as Scarlett was leaving the bank. At this time Scarlett explained that if the defendant changed his mind about going forward to tell Rhema and Showell's counsel Kivitz to sign his name to withdraw monies from escrow account and, that he had already told Kivitz it was ok prior to his, Scarlett, leaving the bank.

Butler, the defendant, told Kivitz he did not want to go through with the settlement and that his clients had defaulted and he wanted the funeral home. Kivitz said that the Judge **"ordered"** this settlement, Butler argued that Scarlett filed a set aside motion, Kivitz showed the defendants an order denying the set aside motion which was final and non-appeable. In the face of the above, Butler agreed to settle. Kivitz, the only counsel present, an official of Court, explained what Butler could do with the money.

Kivitz memorialized the settlement in writing to be filed in the bankruptcy Court. Kivitz offered Butler $350,00 in cashiers checks, however, Butler did not have the stock with him. Settlement was completed and the exchange of stock and money took place on 10-16-91 at Showell's church. Butler placed his $100,00 in the estate bank account, which was set up as required by bankruptcy rules and approved by the trustee's office in 1990. The defendant gave Adkins two (2) checks, one for a $100,000 and one for $150,000. Adkins signed a release that he received $250,000 and his lawyer Nathaniel Simms signed the release as a witness. **Adkins signed his $150,000 check over to charity as agreed and took a tax deduction**. On 10-17-91 Scarlett filed a compromise and settlement notice to the creditors. Father Miller told Butler he needed $10,000 to pay for a Nun's home, Butler had promised a $10,000 donation for the Nuns. Butler gave Father Miller of the St. Bernadine church a $150,000 check. Father Miller deposited the money in John Hanson Bank. John Hanson Bank was Butler's largest secured creditor in his bankruptcy. In mid January 1991 Father Miller was instructed to make out a cashiers check for

$50,000 payable to John Hanson Bank and the African American church. The money was returned, marked, not used for the intended purpose. On 10-17-91 Scarlett sent out to creditors the notice of compromise and settlement of 7-17-91 orders, which was supposed to be docketed. On 11-12-91, Scarlett notified Butler that there has been an objection and all monies needed to be put back. Defendant informed Scarlett that there was no actual objection filed and terminated his services and wrote him a check from the estate account for approximately $19,000 paying him in total. Friday at 3:00 p.m., on 11-13-92, Scarlett filed an emergency exparte turn over motion 40-miles outside of Baltimore. On 11-16-91 at approximately 8:30 a.m. an exparte order was filed ordering Butler and Adkins to put back what they received in two days back into the Court registry. Butler filed a Motion to Vacate the 11-16-91 exparte put back order. On 3-26-92 defendant was converted to a chapter 7[1]. On 4-15-92 defendants Motion to Vacate was heard. The Judge allowed a motion by Bowen Weisheit, John Hanson Bank's lawyers, to hold Adkins and Butler in contempt. John Hanson Bank was Butler's largest secured creditor. Butler's lawyer fearing the Judge would hold Butler in contempt stated that Butler would make an account of the settlement money to the Court. The Judge said he wanted the money put back right away. The Judge, making it more difficult to comply, said that Butler must pay lawyers fee, which was assessed at $100,000 plus interest and Court cost from 10-15-91 until paid. The Judge said that he would

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[1] On 5-1-92 a 411 notice of meeting with creditors was sent out to creditors. Bankruptcy rule 404(A) states that 60 days after notice of creditors meeting and there is no objection, the bankruptee is automatically discharged.

not disturb the 11-16-91 turns over order. No order was issued at this time. Butler anticipates an order and filed a premature appeal, which was never acted upon. On 6-2-92, the Bankruptcy Judge prematurely filed a summary contempt order, stating that after **testimony and argument presented during 4-15-92 hearing on various motions of defendant to avoid effect of said order, he was held** in contempt. However on page two of the **summary contempt order**, the Judge further stated that a hearing was held on defendants motion on 4-15-91, the **defendant, through present, declined to present testimony or evidence**.

From 10-16-91 to 6-2-92, there has not been a notice or enforcement hearing to determine defendant's inability to comply or his ability to comply. Butler appealed the 6-2-92 summary order. On 6-2-92, the Judge denied Butler's motion to vacate. In late April of 1993, the Judge signed a show cause order giving Butler 30 days to respond in writing why Butler should not be incarcerated for violation of Court order. In response, Butler timely filed for an extension of time. The defendant's extension of time was denied on 6-1-93. Butler docketed his response on 6-2-93 stating that he had no money. On 6-15 and 6-16-94, the bankruptcy Court held a hearing on the show cause order why Butler should not be incarcerated. Butler, on the advice of his attorney took the fifth. The Judge stated that Butler could not take the fifth; he went on to say that Butler had an absolute duty as a fiduciary to explain where the money went (the Judge was referring to the 1994 amendment of bankruptcy Rule 521(4), and further stated that he

was going to call the U.S. attorney on possible indictment proceedings).

The Judge ordered Butler and Adkins incarcerated. Butler filed a timely de novo appeal to federal district Court of Maryland. The novo appeal hearing began November 1994.

Butler explained from the beginning, why he must take his 5th privilege. Butler filed an economic status report, reaffirming his response to the 1993 show cause in writing order, of his inability to comply with the order of the district Court. The Judge affirmed the incarceration order of the Bankruptcy Court stating that Butler has waived his fifth privilege by submitting an economic status statement, which Butler swore that he had no money.

The Judge ordered Butler to testify, pay $330,000 or go to jail. Butler repeatedly asked to exercise his 5th privilege. Butler was compelled to testify in order to enjoy his freedom. Butler testified that he squandered the churches money. Butler purged himself.

On or about February 1996, Adkins paid $100,000 into Court registry. In mid April of 1997, Butler was indicted on count one of concealment, fraud of bankruptcy assets, and on count 2 through 6 of 18 U.S.C. §1957, and aiding and abetting 18 U.S.C. 2. The first trial ended in a hung jury. Prior to the first trial Butler had filed a motion in limine that his compelled testimony not be used in his trial. The Judge ruled that all pretrial motions would be binding in the new trial. On December 8th, Butler was found guilty by the jury on all six counts and sentenced to 37-month in prison and two years probation. Butler filed an appeal of the December 8,

1998 conviction. The prosecutor used Butlers compelled testimony, among other statements that Butler "Squandered the money." Butler filed for a new trial and the Judge ruled that Butler was not compelled to testify and **that he may regret that his prior testimony helped convict him but he cannot blame his lawyer for that.**

Butler hired attorneys Nathan and Alan Dershowitz to perfect his appeal. At the April oral argument, the 4th Circuit asked for additional information on the order which compelled Butler to testify in violation of defendants 5th privilege. On May 3, 2000, the 4th Circuit Court affirmed the defendant's conviction and stated that how and when Butler took this 5th privilege he must fail. Further, it was stated that the $100,000 Butler received and the $100,000 Adkins received was a completed phase of concealment and counts 2-6 was both concealment and money laundering.

On May 23, Butler filed for enblanc rehearing, it was denied on 6-14-2000. Butler filed a Motion for Extension of Time to file certiorari to the Supreme Court. On 9-13-2000 this Court extended the time to file certiorari to 10-12-2000.

SUMMARY ARGUMENT

Defendants contend that the Bankruptcy Court violated his due process right and Federal Rules of procedure when the Court issued a turn over order ordering defendant to turn over payment he received from a bankruptcy compromise and settlement. The motion that this order was issued from was filed exparte by other parties (Scarlett) and the Court failed after the turnover order to give enforcement notice, hearing, and order. Court also did not

give notice, hearing, and order before issuing summary contempt order. **Summary contempt can only be given if a party disrupts the judicial administrative procedure of the Court.** Hence, defendant argues that the Court made plain error and abused its discretion by misuse of Court power under Title 18 U.S.C. 401.

Defendant under Bankruptcy Code section 521 was compelled to explain information via testimony as to the whereabouts of funds from bankruptcy compromise and settlement, the Judge in violation of defendant's 5th amendment right, by giving him a choice of paying Court $330,000, testifying, or going to jail. Butler compelled testimony among other statements he made was that Butler **squandered the money**. This statement cannot be held as harmless because even the Court noted that Butler's testimony helped convict him. See Judge Smalkin's response/order to defendant's motion for new trial.

The Government charges that defendant concealed $350,000 by going to settlement without approval from U.S. bankruptcy Court. Defendant argues that this was not true; **in fact the Court on 7-17-91 ordered the defendant to go to settlement.** Government also charges the $350,000 was illegally derived funds, due to alleged concealment, however, docket sheet at entry 52 shows that on 11-4-91 defendant, then, attorney Scarlett filed notice of settlement and compromise and the Judge order, ordering Butler to go to settlement. Hence, the settlement was authorized and the funds ($350,000) were not concealed, thus not illegally derived funds to qualify for the charge of Money Laundering as stated in counts 2 through 6 of the Indictment.

Defendant also argues that under Apprendi, he was denied his Fifth and Sixth Amendment right because the Indictment incorrectly stated the factual elements of the alleged offense, there by deceived the jury in making wrong decisions with out the correct factual elements, under the reasonable doubt standard of proof. Further the Indictment charges Butler, with violating Title 18 U.S.C. §152(2). The Indictment does not specify 152(1) A, B, C or 152(2). However, under §152(2) the penalty is twice the amount of the money charged. The penalty for §152(1) is 10 years and a fine or both.

ARGUMENT I

There must be a specific notice hearing and order

This Court stated in Fuentes v. Shevin, 407 U.S. 67, 32 Led 2d 556, 92 S.Ct. 1983, in the summary seizure of property case, the following principle of constitution law:

> The procedural due process right to notice and a hearing before deprivation of property must be granted at a time when the deprivation can still be prevented; no later hearing and damage award for wrongful deprivation can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred.

On 11/16/91 there was a turnover order issued by the Court to pay $350,000 to Court registry in two days. Defendant argues there was no Notice, Enforcement Hearing, or order following the turnover order instructing the defendant specifically what the Court was ordering him to do and finding his ability to comply.

The Court ruled in Fuentes;

Due Process requires notice,

> The central meaning of procedural due process is that parties whose rights are to be affected are entitled to be heard; ad in order that they may enjoy that right, they must be notified. The due process right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner.
>
> The Fifth Amendment requires that, before a federal agency may take an action, which affects a constitutionally protected interest in life, liberty, or property, "[p]arties whose rights are to be affected are entitled to be heard;
>
> And in order that they may enjoy that right they must first be notified." Fuentes V. Shevin, 407 U.S. 67, 80 90 S.Ct. 1983, 1994, 32 L. Ed. 2 556 (1972).
>
> It is fundamental that the right to notice and ad opportunity to be heard "must meaningful manner. Fuentes 407 U.S. at 80, 92 S. Ct. 545, 552, 82 S.Ct. 1187, 1191, 14 L. Ed. 2d 62 (1965).

The Court in U.S. v. Butler, later had a De Novo hearing to show cause why Butler should not be incarcerated, to undo the damage of summary contempt order.

> This Court has not…embraced the general proposition that wrong may be done if it can be undone. Stanly v. Illinois, 405 U.S. 645, 647, 31 L. Ed. 2d 551, 556, 92 S. Ct. 1208.

This case should be remanded under Fuentes v. Shevin.

Whether defendant was compelled to give up his 5th Amendment privilege in order to enjoy his right to freedom?

> The defendant was given the choice of complying by paying turn over of $330,000 to the Court or incriminate yourself by testifying or go to jail. This Court ruled in Simmons 390 § U.S. 377:
>
> "But a rule which compels the defendant to forgo one of his two constitutional rights as a condition to exercise of

> the other is, in my opinion, invalid." 259 F. 2d. 12 at 197 (Citation omitted, emphasis is in original)

This Court stated in Simmons v. United States, (1995) 348 U.S. 397, 99 L. Ed. 453, 75 S.Ct. 397, in a case of testimony to enforce constitutional rights:

> A rule which compels the defendant to forego one of his two constitutional rights as a condition to exercise of the other is, in my opinion, invalid. 259 F. 2d 192 at 197 (Citations omitted, emphasis in original).

Butler filing in his proof was forced to pay the unconscionable price by testifying, "I squandered the churches money" which was tantamount to an admission of "guilt", Simmons 390 § US 377 also stated:

> "If this evidence was improperly admitted, there exists far more than the "reasonable possibility" that the evidence contributed to the conviction which is necessary for reversal. Fahy v. Connecticut, 375 U.S. 85, 86-87 (1963).

Butler had to give up his 5th Amendment privilege to enjoy his freedom. Simmons 390 § US 377 further stated:

> "To thus force the defendant Garrett to barter away his rights against self-incrimination in return for the opportunity to assert his Forth Amendment right is a violation not only of the right against self incrimination, but of the right to due process itself.

The district Court should not have permitted this compelled testimony at trial.

> "Therefore, the trial Court erred in permitting the testimony of the petitioner Garrett in support of his motion to suppress the evidence to be read t the jury as part of the Government's case in chief." Simmons 390 U.S.

This case should be remanded under Simmons 390 U.S. 377

Judge does not believe Butler has ability to comply.

The U.S. District Court stated in Scarlett v. Butler et al stated at the March De Novo hearing before defendant was compelled to testify:

> "Okay, so you know, I was none aware, Mr. Butler there's any disputed issue of fact about that $20,000; it doesn't sound like there is. And it sounds like maybe, indeed—maybe, indeed, in order to comply with Part A of the Court's Order, if you came up with one $330,000 that would purge you of the contempt. But that's just not realistic, Mr. Butler, unless you surprise me beyond all belief, because I'm satisfied that your assets are limited, but I don't know. That's something that's open, because nobody knows."

This Court also ruled in Maggio v. Zeitz 333 U.S. 56, 59:

> "Although we know that Maggio cannot comply with the order, we must keep a straight face and pretend that he can, and must thus affirm orders which first direct Maggio to do an impossibility, and then punish him for refusal to perform it." Whether this is to be read literally as its deliberate judgment of the la of the case or is something of a decoy intended to attract our attention to the problems, the declaration is one which this Court, in view of its supervisory power over Courts of bankruptcy, cannot ignore Fraudulent bankruptcies probably present more difficulties to the Courts in the Second Circuit than they do elsewhere. These conditions are reflected in conflicting views within the Court of Appeals, which we need not detail as they are.

Maggio further states that when the inability to comply is recognized by the Court all-civil act must stop. The judge

statement clearly showed that he did not believe that defendant had ability to comply. This case should be remanded under Maggio.

ARGUMENT II

SUMMARY CONTEMPT

The question is whether there was any action on the part of Butler from: 11/16/91 to 6/2/92 to obstruct the bankruptcy judge in the performance of his administrative duties. This Court ruled in Thomas McConell v. U.S. U.S. 370, U.S. 230 the following:

Contempt §5 – in presence of Court — obstruction of justice.

> 3. The power of a Court of the United States, defined in 18 USC §401, to punish misbehavior in its presence or so near thereto as to obstruct the administration of justice rests upon an obstruction to the performance of judicial duty resulting from an act done in the presence of the Court, and the existence of that element must clearly be shown in every case where the power is exercised.
> Congress has limited, in 18 USC §401, the summary contempt power vested in Courts of the United States to the least possible power adequate to prevent actual obstruction of justice.
>
> Before the drastic procedures of the summary contempt power may be invoked to replace the protections of ordinary constitutional procedures there must be an actual obstruction of justice:
>
> "An obstruction to the performance of judicial duty resulting from an act done in this presence of the Court is, then, the characteristic upon which the power to punish for contempt must rest."
>
> [2] Under these circumstances, we believe that the district Court abused its discretion by holding the officer in contempt in the absence of an enforcement order

> specifically directed to the officer. In light of the officer's invitation of the contempt sanction, the district Court's action does not raise due process concerns, but it does implicate the practical purpose underlying the requirement of notice to the alleged contemnor. There is nothing in the record to indicate precisely why the officer was held in contempt. The officer suggest that the contempt order was based on an "implied enforcement order" requiring the officer to relinquish the airport documents to the corporations. We decline to infer the existence of such an order. The fifth amendment rights of an individual resisting production of documents often turn on subtleties and enforcement order, see, e.g., Brown, 768 F.2d at 531 (Becker, J., concurring), and we cannot evaluate the officer's fifth amendment claims on the basis of speculation as to the nature of an "implied" enforcement order.
>
> Accordingly, we will affirm the district Court's contempt order as to the appellant corporations and reverse the order as to the appellant officer.

There was nothing in defendants action at the motions to vacate the 11/16/91 put back order held on 4/15/92 (defendant did not utter one word nor leave his seat) disrupting the Courts business to be an obstruction of justice, thus there was no blocking of the judges performance of his judicial duty.

In re Grand Jury March 17, 1987 v. Bissell Norman, No. 87-5396. the Court ruled the following:

> We now consider the contempt order as to the officer. Here our standard of review is whether the district Court abused its discretion in imposing the contempt sanction. Delaware Valley Citizens Council for Clean Air v. Pennsylvania, 678 f.2d 470, 478(3rd Cir.) cert. Denied, 459 U.S. 969, 103 S.Ct 298, 74 L.Ed.2d 280 (1988) An individual may not be placed at risk of contempt unless he has been given specific notice of the norm with which his

> conduct must comply. Inmates of Allegheny County Jail v Wecht, 754 F.2d 120, 129 (3rd Cir. 1985). Although this requirement is grounded in notions of due process, it also serves an important practical purpose: notice to the individual is necessary to allow a reviewing Court to assess the propriety of the contempt sanction. If a contempt order is not preceded by a specific directive to the alleged contemnor, the reviewing Court cannot determine the factual basis for imposition of the sanction.

This case should be remanded under McConnell v. U.S.

Whether the 4th Circuit committed error, and abused its discretion in denying Butler his due process by affirming the lower Court on the allege fact that Butler should have taken his privilege at enforcement hearing of 4-15-92 when if fact there was no enforcement hearing on 4-15-92?

The Fourth Circuit based its affirming of the lower Court decision on **when and how Butler took his Fifth Amendment privilege he must fail. The Fourth Circuit stated** that Butler did not take his Fifth Amendment privilege at the 4-15-92 enforcement hearing nor did Butler appeal that order of the contempt order which is now final and non-appealable res judicata and cited in Maggio v. Zeitz 333 US 56 and In re: Grand Jury Subpoena v Smith, 87 F.3d 1204, stated Smith testified to her inability to comply at the enforcement stage, and to say that Smith waived her privilege by testifying that she could not comply with the order that **would create an intolerable result**. However, one of the elements of res judicata is the case must have been decided on the merits. The 4/15/92 hearing was on defendant's Motion to Vacate the 11/16/91 Turn Over Order, which was not final because there was, no enforcement order, the transcript and docket clearly shows

that the 4/15/92 hearing was held on defendant's Motion to Vacate the 11/16/91 Order for the 4th Circuit to tell defendant that he should have taken the Fifth at the enforcement stage and then deny defendant was denied an enforcement notice, hearing, and an order telling defendant specifically what you want him to do and his ability to comply or his inability to comply is a violation of defendant's due process under the Constitution. To issue a Summary Contempt based on this denied due process then order the defendant **incarcerated** is surly **creating** an **intolerable result.**

ARGUMENT III

WHETHER OR NOT THERE WAS A CONCEALMENT IN THIS CASE?

Defendant asserts there was no bankruptcy concealment. One hundred thousand dollars ($100,000) was placed in bankruptcy account #0562147, in which a monthly financial report is submitted to the trustee, the report is mandatory in all bankruptcy cases. Butler's counsel Scarlett signed and turned the report in each month. Upon filing Chapter 11 the person must state the bank and give the account number. The trustee has had this information on a monthly basis for Butler since the beginning of his bankruptcy.

This $100,00 check was available and not concealed, the trustee only had to check Butlers' account or ask the issuing bank for a copy of the back of the check. As to the remainder of the funds #250,000, Adkins placed $100,000 in his personal account and Father Miller placed $150,000 in the St. Bernadine (the church) account. The trustee simply could have asked the issuing

bank (Harbor Bank) for a copy of the back of the checks which would have shown who signed it, what bank the funds were in and the account number the funds were deposited.

Vice President of Harbor Bank Mr. Frazier testified he could have submitted this information in two days had he been asked. Courts have addressed similar matters and ruled that Courts or government have an obligation to make reasonable inquiry as to the whereabouts of the settlement funds. This was not done.

On 10/17/91 Scarlett mailed copies of compromise and settlement to the creditors, and a copy of Judge Schneider 7/17/91 order, ordering Butler to go to settlement with the Rhema and Showell for unexplained reasons the above was not docketed until 11/04/91 by Scarlett.

Kivitz, Showell's lawyer an officer of the Court, memorized the settlement in writing, which was filed and docketed in the Showell case. Judge Schneider had assigned both cases to himself. Butler argues again that the judge, trustee, and Scarlett could have ascertained by looking at the file that the funds were not concealed or hidden.

On 11/12/91, Scarlett told Butler that Kivitz explained to him that he (Butler) received $100,000 and that Adkins had received $250,000 from the Harbor Bank. Attorney Scarlett knew the ban that issued the fund and who it was issued to, Scarlett also knew where the funds were located. At the 11/12/91 meeting at Scarlett's office, Butler acknowledge he had received the funds, and paid Scarlett for his services, then discharged him as his counsel because of Scarlett's failure to file appeal of Courts

7/17/91 order, ordering Butler to settlement, despite Butler's request that he file an appeal. The disgruntled Scarlett motioned the Court, exparte, the next day at 3:00 p.m. 40 miles outside of Baltimore seeking the return of monies from the settlement. His filing of the exparte order was the genesis of this case.

Butler further argues the funds were not concealed because Judge Black in Scarlett v. Butler, et al, ruled in 1993, which was prior to the 1997 indictment charges against Butler, that Adkins would have to pay a bond of 250,000 to stay finding of the Court, the exact amount he received from the compromise and settlement while he was appealing the District Court decision in that case to the 4th Circuit.

Butler asserts and believes he has demonstrated to the Courts, the counsel, and the trustees knew the whereabouts of the settlement checks. Whether Butler misappropriated, stole, or contracted with Adkins against the rules of Bankruptcy is another issue, but the trustees always knew Butler received the checks.

Butler was charged with one count of concealment of assets in bankruptcy, in violation of 18 U.S.C. § 152 (count one) and five counts of engaging in monetary transactions in proceeds derived from specified unlawful activity in violation of 18 U.S.C. § 1957 ("money laundering" counts two through six). The monetary transactions alleged to have been undertaken in violation of the money-laundering statue were undertaken during the period of time that the indictment charged Butler was still engaged in the concealment of the assets.

Defendant's claim the case as presented by the government and as tried to the jury, that the alleged money laundering transactions were part and parcel of the transactions the government claimed were acts of concealment constituting bankruptcy fraud, and could not properly constitute money laundering under 18 U.S.C. § 1957.

On the merits, the government does not argue that the alleged acts of money laundering were not acts of concealment that also constituted part of the bankruptcy fraud charged in the indictment. On the contrary, the government calls the "transactions that were charged as money laundering" the "most egregious act of concealment." Nor does the government make the fact-based claim that these transactions involved proceeds that were obtained from a "prior, separate criminal activity," as in United States v. Savage, 67 F3d 1435, 1441 (9th Cir. 1995), cert. denied, 516 U.S. 1136 (1996); from a "completed offense." As in United States v. Christo, 129 F3d 578, 580 (11th Cir. 1997); as in United States v. Johnson, 971 F2d 562, 569 (10th Cir. 1992)," as in United States v. Conley, 37 F3d 970, 980 (3rd Cir. 1994) (emphasis added). Rather, the government appears to argue that, notwithstanding these decisions of the Third, Ninth, Tenth and Eleventh Circuits, the Courts should refuse to recognize any temporal limitation on the transactions that may be prosecuted as money laundering, notwithstanding that money laundering transactions can occur only with "proceeds" of another crime. It cites a number of cases in making that argument, but a reading of those cases discloses that they do not stand for the principle the government advances.

To allow a conviction under § 1957 under these facts would result in the expansion of the statue far beyond the limits Congress intended. After all, "Congress considered money laundering to be separate conduct occurring after completion of the underlying criminal offense." United States v. Savage, 67 F3d 1435, 1441 (9th Cir. 1995), cert. denied, 516 U.S. 1136 (1996) (emphasis added). See also United States v. Christo, 129 F3d 578, 580 (11th Cir. 1997) (under § 1957 "the underlying criminal activity must be complete before money laundering can occur"); United States v. Johnson, 971 F2d 56, 569 (10th Cir. 1992) ("Congress intended the money-laundering statues to apply to transactions occurring after the completion of the underlying criminal activity").

This is particularly troubling in light of the fact that, even as written, the money-laundering statue is a "draconian law." United States v. Rutgard, 116 F3d 1270, 1291 (9th Cir. 1997).

> Such a powerful instrument of criminal justice should not be expanded by judicial invention or ingenuity. We "should not enlarge the reach of enacted crimes by constituting them from anything less than the incriminating component contemplated by the words used in the statute."

The government argues, for example, that in United States v. Morelli, 169 F3d 798, 809 n. 12 (3d Cir. 1999), the Third Circuit "rejected" a temporal restriction on acts that can be tried as money laundering.

Since the transaction at issue in this case took place while the concealment was still on going, and were, in fact, acts of concealment under the prosecutor's theory, they cannot also have

been transactions involving the proceeds of that concealments, and so cannot support a conviction under § 1957. The convictions under counts two through six should be vacated and those counts dismissed. The first count, charging concealment of assets in bankruptcy, should also be dismissed, as the likelihood of conviction by creating an appearance of greater criminality than could possible existed.

The government cannot have it both ways. Indeed, if the transactions involving the cashier's checks were not acts of concealment, then there was no justification for the introduction of evidence relating to the numerous similar transactions, which were not charged as money laundering, and the massive prejudice would be the grounds for reversal of Butler's convictions. In order to obtain a conviction under § 1957, the government must prove that the charged transactions involved "criminally derived property." "Criminally derived property" is defined as "any property constituting, or derived from, proceeds obtained from a prior criminal offense." 18 U.S.C. § 1957(F)(2). In this case the criminal offense of which the property was alleged to have been the proceeds was the violation of § 152. But since the transactions were part of the alleged violation of § 152. The money involved could not also be the proceeds of that offense.

However the Fourth Circuit argue that the $100,000 given to Butler and the $100,000 that Adkins received were a completed phase of concealment and that the $150,000 given to Father Miller was both Concealed and Money Transaction in violation of 18 U.S.C. § 1957.

On 3/6/92 Butler was converted to Chapter 7. On 5/1/92 a notice of the 441 creditors meeting was sent to all interested parties. Rule 404(A) of Bankruptcy Rules states that 60 days after notice to creditors of the 441 meeting of creditors, and there are no objects the bankruptcy is discharged.

Title 18 U.S.C. § 152 is a bankruptcy statue and to be indicted under this bankruptcy statue the defendant need be in bankruptcy in violation of the statue.[2] Butler, was out of bankruptcy as a 7/1/92 pursuant Rule 404(A). Government contends / charge in the indictment (under count II) at page 3, that the money laundering 18 U.S.C. § 1957 began "on or about September 9, 1992."[3] Butler had been out of bankruptcy for more than two months before the alleged beginning of the money laundering.

Defendant contends under 18 U.S.C. § 1957 the concealed money must be from criminally derived funds. And that because he was out of bankruptcy, the funds was not criminally derived

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[2] Under this Indictment as drafted, the jury would need a guilty verdict form, where the jury could state when the crime of concealment was completed as of a certain date. There was no form where the jury could state how much money Butler was guilty of concealing (0, $50,000, $100,000, $250,000, or $350,000).

1. The judge enhanced Butler for specific offensive characteristics of concealment of $350,000.
2. Specific offensive characteristic of more than minimum planning.
3. Specific offensive characteristic of violation of a court order.
4. Abuse of position.

These are elements of the crime that must be proven beyond a reasonable doubt by a jury of Butler's peers, not the Judge (See Apprendi Citation omitted).

[3] In fact under the Government theory of indictment Butler's concealment began in July 1990 and ended when Butler was discharged (7/1/92).

pursuant to U.S.C. 152, as charged in the indictment, it and it could not and did not qualify as criminally derived funds as need under 18 U.S.C. § 1957.

IV. WHETHER PETITIONER WAS DENIED DUE PROCESS UNDER APPRENDI

It is axiomatic that under Apprendi v New Jersey, 120 S.Ct. 525 (Nov. 29, 1999), the Fifth Amendment Due Process clause and the Sixth Amendment Right to Notice and Jury Trial required that a defendant be charged in an Indictment with all the elements of the crime and submitted to the jury, and that the jury find proof of those specific allegations beyond a reasonable doubt.

The government's allegations in paragraph three of the Indictment charged Petitioner with fraudulently concealing funds in the amount of $350,000. This amount was not concealed. Petitioner's D.I.P. account showed a deposit of $81,000, and $19,000 in legal fees to Attorney Scarlett for representation. As of late 1991 and early 1992, the maximum the Indictment should have alleged was $250,000, if any.

The $100,000 was, in good faith, accounted for by Petitioner, and the $250,000 balance was easily traceable by the bankruptcy trustee before the Indictment of Petitioner. A phone call to Harbor Bank would have provided the trustee with information as to who received the $250,000. Two more phone call to Mr. Adkins ($100,000) and to Fr. Miller ($150,000) by the trustee would have verified the location of the funds. Two of the three checks disbursed at the Rhema-Showell-Butler settlement were Cashier's Checks from Harbor Bank that Judge Schneider

was fully aware of as it clearly reflects on **the District Court's order.**

The Indictment, at least, should have made specific statements as to the correct dates and dollar amounts charged Petitioner. This Honorable Court in re: Winship, 397 US 358, 364 (1970), held that "the due process clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."

The principle recited in re: Winship requires that the allegations in the Indictment must be proved to an accepted by a jury beyond a reasonable doubt. In the present case, such proof was impossible because Petitioner acted on the basis of a Court order in which he was specifically named. As stated above, the amount was never $350,000. The $100,000 amount was, in good faith, deposited as $81,000, and the $19,000 paid to Attorney Robert Scarlett as attorney's fees, which are legitimate deposit and expense for a Debtor-in-Possession. The Government alleged that it did not have knowledge of said deposit. Since Petitioner's D.I.P. account number had been disclosed in Petitioner's interim financial statements filed with the Bankruptcy Court on may occasions, the Government could have easily accessed the information if it wanted to. But it did not do so, in bad faith.

The amount of $350,000 is a critical element of the indictment. Since the Indictment erroneously stated $350,000, the jury was deprived of the correct factual element of the alleged offense. Under Winship, Petitioner was denied his Due Process

clause protection. The jury was deceived in reaching their decision because if the jury knew that a third amount in question was placed in the proper account by Petitioner and another $100,000 was returned by James Adkins before the indictment, there is a reasonable probability that the jury's decision would have been favorably different.

The dates in the indictment also conflict with the facts that are part of the record. The indictment states 10/15/91 as the start of the alleged concealment. Since Petitioner acted in accordance with Judge Schneider's order of 7/17/91, a copy of which is attached, he could have started alleged concealment on 10/15/91. The earliest that he could have known that he allegedly acted improperly was when he met Attorney Scarlett on or about 11/12/91. Since Petitioner acted in accordance with Judge Schneider's Order of 7/17/91, he could have known or started the alleged concealment on 10/15/91.

This allegation by the Government prejudiced Petitioner's due process right in front of the jury that was fed with incorrect facts in the Indictment.[4]

Again, the jury was deprived of the right to make factual determination as to the date because the Government did not want the 11/12/91 date introduced into evidence, because had said date been stated in the Indictment as the start of the alleged concealment, then the government's case would have filed in that the check for $150,000 that was given to Fr. Miller was given to

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[4] The indictment charged Butler with violating Title 18 U.S.C. §1957, it did not specify §1957(1) or (2) thus Butler must be sentenced under §1957(2) the lesser charge.

him prior to 11/1/91. Therefore, there could be no concealment with an 11/12/91 date because the money was **donated** before Petitioner became aware of his alleged legal obligations. By definition, under 18 U.S.C.A § 152, a person commits the act of concealment when "he knowingly or fraudulently conceals." Attorney Scarlett informed petitioner that his actions in giving the $250,000 to Adkins were improper on 11/12/91. Petitioner met with Scarlett to terminate his assistance because he (Scarlett) did not appeal Judge Schneider's 7/17/91 Order to settle with Showell and Rhema, Inc. Petitioner never wanted Showell and Rhema's money, but the return of his funeral home.

There was no concealment because at the time Petitioner received the money ($350,000) and paid Adkins ($250,000), he was acting under the order of the Court. The amount and dates stated in the denied Petitioner his Constitutional protection afforded him under the Fifth and Sixth Amendments.

On 5/1/92, a notice of the 441creditor meeting was sent to all interested parties. Rule 404(A) of the Bankruptcy Rules states that 60 days after notice to creditors of the 441 meting of creditors, and there are no objections, the bankruptcy is discharged.

Title 18 U.S.C. § 152 is a Bankruptcy statue and to be indicted under it the defendant need be a bankruptee under the statue. Petitioner was out of bankruptcy as of 7/1/92 pursuant to Rule 404(A). The Government contends / charged in Indictment (under Count II) on page three of the Indictment that the money laundering under 18 U.S.C §1957 began "on or about September 9,

1992". Petitioner had been out of bankruptcy for more than two months.

Petitioner contends that under 18 U.S.C. §1957 money must be criminally derived funds. Because Petitioner was out of bankruptcy, the funds were not criminally derived pursuant to 18 U.S.C. §152 as charged in the Indictment, and did not qualify as criminally derived funds as needed to sustain a conviction under 18 U.S.C. §1957.

CONCLUSION

This case should be remanded under this Court precedence cases: Apprendi, Fuentes, Maggio, Simmons, and McConnell.

/s/ Edward R. Butler
Reg. #32745-037
F.C.I. Milan
Milan, MI. 48160

/s/ JoArne W. Stitt
Notary of Republic
10/12/00
Notary Public, Washtenaw County, MI
My commission Expires Oct 18, 2003

Respectfully Resubmitted: /s/ Edward R. Butler
Reg. #32745-037

APPENDIX

UNITED STATES of America, Plaintiff-Appellee,

v.

EDWARD R. BUTLER, Defendant-Appellant

No. 99-4153

United States Court of Appeals,
Fourth Circuit.
Argued March 1, 2000.
Decided May 3, 2000.
Rehearing Denied May 22, 2000.

Nathan Z. Dershowitz (argued), Dershowitz & Eiger, P.C., New York, for Defendant-Appellant in No. 99-4153

Victoria Eiger (briefed), Dershowitz & Eiger, P.C., New York, for Defendant-Appellant in No. 99-4153

Barbara Slaymaker Sale, (argued) Assistant United States Attorney, Baltimore, MD, for Plaintiff-Appellee.

Before: LUTTIG, WILLIAMS, and MOTZ, Circuit Judges.

Affirmed by published opinion. Judge Motz wrote the opinion, in which Judge Luttig and Judge Williams joined.

OPINION

DIANA GRIBBON MOTZ, Circuit Judge:

A jury convicted Edward R. Butler of one count of Bankruptcy fraud, in violation of 18 U.S.C. § 152 (1994 & Supp. IV 1998) and five counts of money laundering, in violation of 18 U.S.C. § 1957 (1994). On appeal, Butler's principle contention is that his money laundering convictions cannot stand because they are based on the

very same transactions that form the basis of his bankruptcy fraud conviction. Butler maintains that the funds involved in theses transactions could not constitute "criminally derived property," as required by the money laundering statue, because these funds became "criminally derived" only after the fraudulent transactions were complete. Although we agree that the statue prohibits only the laundering of "criminally derived property," we must reject Butler's argument. At the time of the charged money laundering transactions, Butler had already concealed the funds from the bankruptcy trustee, and the funds that he laundered therefore were "criminally derived property." We also reject Butler's other arguments and so affirm his convictions and sentence.

I.

The government introduced evidence from which the jury could find the following facts. After filing bankruptcy in July 1990, Butler settled a debt owed to him by the Rhema Development Corporation and its principles, Reverend and Mrs. Cornelius Showell, who were also in bankruptcy at the time. Butler had sold a funeral home to the Showells during the 1980's, and he had taken the note as part of the purchase price, with stock in the funeral home held as collateral. The Showells agreed to pay Butler a $350,000 settlement, with payments to be made into an escrow account for which the parties' attorneys would be joint signatories. Butler disclosed the settlement plan to his creditors, but he did not obtain the approval of the bankruptcy court.

Pursuant to this plan, the Showells paid $65,000 into the escrow account but fell behind in their payments. The parties then negotiated a new arrangement. On October 15, 1991, Butler released back to the Showells the $65,000 that had been held in escrow; the Showells then issued three checks: one for $1000,000 payable to Butler, and two others, for $100,000 and $150,000 respectively, payable to James Adkins, an associate of Butler who had acquired an interest in the funeral home. Butler did not report any of these transactions to the bankruptcy trustee or his creditors.

Butler used the funds realized from the first $100,000 check, payable to him, for personal expenses; Adkins kept the funds from the second $100,000 check. The government alleged that Butler fraudulently concealed from the bankruptcy trustee the funds derived from both of these checks.

With respect to the remaining $150,000 check, Butler was alleged to have both concealed these funds from the bankruptcy trustee and laundered them. Upon receipt of this check, Butler caused Adkins to endorse it and transfer it to him. Butler them gave the check to Father Edward Miller, a trusted friend. Father Miller, apparently unaware of the origins of the check, held the funds realized from this check on Butler's behalf in bank accounts for over a year.

Between September 1992 and January 1993, Butler directed Father Miller to draw on the $150,000 in order to purchase four cashier's checks payable to Bishop Randolph Caines, a Philadelphia pastor

and associate of Butler. These four transactions constitute the basis for Counts II through V of the indictment, which charged Butler with aiding and abetting money laundering in violation of 18 U.S.C. § 1957. Bishop Caines used a substantial portion of the money to open an account, over which Butler had control, at First Fidelity Bank in Philadelphia. In April 1993, Butler directed Alice Tatum, Bishop Caines' assistant, to purchase a cashier's check payable to S. Lee Martin." This transaction became the basis for Count VI of the indictment, also charging Butler with aiding and abetting money laundering. The government alleges that the funds represented by this last check were eventually used to purchase a lien on Butler's house.

Count I of the indictment charges that, from on or about the date of the Rhema-Showell settlement until 1995, Butler fraudulently concealed from the bankruptcy estate the entire $350,000 received from the settlement. Butler's first trial ended in a hung jury, but his second trial resulted in convictions on all six counts.

II.

Butler contends that we must reverse his convictions for money laundering because the funds used to purchase the five cashier's checks involved in the five money laundering counts did not constitute "criminally derived property." Butler argues that these funds did not become "criminally deriver property" until he completed some act of bankruptcy fraud, and he maintains that the government failed to prove completion of such act prior to the purchase of the checks. Although the extent to which Butler has

preserved this argument for appellate review is not entirely clear, [1] for purposes of this appeal we give him the benefit of the doubt and treat it as a challenge to the sufficiency of the evidence, fully preserved for review by a timely Rule 29 motion, See Fed. R. Crim. P. 29. As such, we must sustain his conviction if the record, viewed most favorably to the government, contains substantial evidence to support the convictions. See Glasser v. United States, 315 U.S. 60, 80 (1942).

Federal law defines money laundering as "a monetary transaction in criminally derived property that is ... derived from specified unlawful activity," 18 U.S.C. § 1957(a); such activity includes concealment of assets in bankruptcy. See 18 U.S.C. § 1956(c)(7)(D) (1994 & Supp. IV 1998); 18 U.S.C. § 152. The plain language of the money laundering statue thus requires that the funds involved in the forbidden "monetary transaction[s]" represent the proceeds of "specified unlawful activity."

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[1] The government maintains that Butler has waived this argument by his failure to challenge either the indictment or the jury instruction. See Fed. R. Crim. P. P. 12(f) and 30. Butler disclaims any intent to challenge either the indictment or jury charge; he contends that he is relying on a "legal defect" in the evidence. Reply Brief at 2. Although there is some support for the view that Butler's argument constitutes a challenge to the indictment, see United States v. West, 22 F.3d 586, 590 n.11 (5th Cir. 1994), most courts have regarded similar arguments as challenges to the sufficiency of the evidence. See United States v. Savakhom, 186 F.3d 928, 942-43 (9th Cir. 1999); United States v. Morelli, 169 F.3d 798, 802-03 (3rd Cir. 1999); United States v. Christo, 129 F.3d 578, 579 (11th Cir. 1997); United States v. Johnson, 971 F.2d 562, 566-67 (10th Cir. 1992); see also United States v. Levine, 970 F.2d 681, 685-86 (10th Cir. 1992) (viewing argument as challenge both to the indictment and to the sufficiency of the evidence).

In enacting the statue, Congress expressed concern about criminals' use of "complex schemes to disguise the illegal nature and true source" of the proceeds of their illegal activity. See S. Rep. No. 99-433 at 2 (1986). The legislative history indicates that "Congress passed the money laundering statues to criminalize the means criminals use to cleanse their ill-gotten gains." United States v. Savage, 67 F.3d 1435, 1441 (9th Cir. 1995).

In other words, Congress did not fashion the money laundering statue to create a new source of criminal liability for every fraudulent monetary transaction. Rather, "both the plain language of § 1957 and the legislative history behind it suggest that Congress targeted only those transactions occurring after proceeds have been obtained from the underlying unlawful activity." See Johnson, 971 F.2d at 569 (reversing certain money laundering convictions). To provide the basis for a money laundering offense, a financial transaction must involve funds that have been "criminally derived."

Funds are "criminally derived" if they are "derived from an already completed offense, or a completed phase of an ongoing offense." United States v. Conley, 37 F.3d 970, 980 (3rd Cir. 1994); see also Savakhom, 186 F.3d at 943 (finding that receipt of funds in response to fraudulent mailing could support money laundering conviction when initial fraudulent mailing formed completed phase of the offense); Morelli, 169 F.3d at 806-07 (finding that first set of fraudulent wire transfers was not money laundering but that

subsequent wire transfers involved proceeds of the first set of transfers, and therefore did constitute money laundering); Cristo, 129 F.3d at 580-81 (reversing money laundering conviction when "withdrawal of funds charged as money laundering was one and the same as the underlying criminal activity of bank fraud and misapplication of bank Funds"); Savage, 67 F.3d at 1441 (holding that money laundering involves "funds obtained from prior, separate criminal activity". Put plainly, the laundering of funds cannot occur in the same transaction through which those funds first become tainted by crime.

This conclusion does not assist Butler, however. At trail, the government introduced evidence from which a jury could conclude that Butler engage in the concealment of assets from the bankruptcy trustee almost immediately upon receipt of the settlement proceeds from the Showells. At latest, the funds at issue in the five money laundering counts became "criminally derived property" – property derived from Butler's bankruptcy fraud – when Butler passed the $150,000 check from the Showell settlement to Father Miller in October 1991. Thus, by September 1992, when Butler began directing the purchase of cashier's check in question, the transfer of funds to Father Miller was a "completed phase of an ongoing offense," Conley, 37 F.3d at 980; with Father Miller's apparently unwitting assistance, Butler had managed to conceal these funds from the bankruptcy trustee and his creditors for nearly a year. As a result, when Butler, from September 1992 to early 1993, used these funds to purchase the five cashier's checks,

he was "engag[ing] in a monetary transaction in criminally derived property," i.e., property derived from bankruptcy fraud. See 18 U.S.C. § 1957(a).

At oral argument, Butler's counsel contended that the government had not argued to the jury that any acts of asset concealment constituting bankruptcy fraud had occurred aside from the five transactions also alleged to be money laundering. Butler stressed the fact that the government, during closing argument at trial, characterized those five transactions as "the most profound acts of concealment." Earlier in jury argument, however, the prosecutor clearly described Butler's activities in October 1991, immediately after the Rhema-Showell settlement, as "the beginning of all of these means of concealment," and further argue that Butler "secreted" the $150,000 check with Father Miller prior to the purchase of the five cashier's checks.

After review of the record, we are satisfied that the government presented the jury with sufficient evidence to support the conclusion that, at the time Butler ordered the purchase of each of the five cashier's checks, he had completed a phase of the bankruptcy fraud. The five transactions that form the basis for the money laundering counts were thus transactions in "criminally derived property."[2]

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[2] In review of our holding on this issue, we need not, as Butler concedes, address his contention that the district court improperly found for sentencing purposes that he concealed the entire $350,000 from the bankruptcy trustee, rather than only a portion of these funds.

III.

Additionally, Butler maintains that the government's use at his criminal trial of testimony he gave during a 1995 civil contempt proceeding constitutes reversible error. The bankruptcy court held Butler in contempt for his failure to account for the proceeds of the Rhema-Showell settlement; and the district court subsequently allowed Butler t purge himself of contempt by either "(a) paying over the $350,000 to the Trustee, or (b) subjecting [himself] to examination under oath, in open court, for the purpose of specifically disclosing all information relating to disposition of the settlement funds...."Butler ultimately chose to testify. He now contends that this testimony, given under threat of incarceration for civil contempt, was "compelled" in violation if his Fifth Amendment privilege against self-incrimination, and that this "compelled testimony" was improperly admitted into evidence at his criminal trial. Brief of Appellant at 24.

Butler's argument requires us to determine the legal status of his 1995 civil contempt testimony; we review de novo the district court's admission of that testimony at Butler's criminal trial, over Butler's assertion of privilege. See Hawkins v. Stables, 148 F.3d 379, 383 (4th Cir. 1998). Given the relevant facts as to how and when Butler asserted his Fifth Amendment privilege, his argument must fail.

In November 1991, the bankruptcy court, in response to an emergency motion filed by Butler's attorney, ordered Butler to turn

over the $350,000 from the Rhema-Showell settlement. After he failed to do so, the bankruptcy court issued an enforcement order in April 1992 and found Butler to be in civil contempt on June 2, 1992. Two years later, the bankruptcy court granted the sanctions of incarceration against Butler for his failure to comply. On appeal, the district court held hearings in November 1994 and March 1995. Butler invoked the Fifth Amendment for the first time during the June 1994 hearing before the bankruptcy court, 31 months after the bankruptcy court first ordered him to turn over the Rhema-Showell settlement proceeds and 24 months after the bankruptcy court held him in contempt for failing to do so.

The bankruptcy court's April 1992 order enforcing the November 1991 turnover order was final and appealable. See Smith v. Revie (In re Moody), 817 F.2d 365, 367-68 (5th Cir. 1987). The enforcement order necessarily contained a finding that, at the time the order was issued, Butler possessed the ability to account for the $350,000 – a finding that Butler did not appeal, or even, apparently, contest. Two years later, in 1994, when Butler first invoked the Fifth Amendment, it was far too late for Butler to seek "reconsideration [of] the legal or factual basis of the order alleged to have been disobeyed." Maggio v. Zeitz, 333 U.S. 56, 69 (1948) (quoted in United States v. Rylander, 460 U.S. 752 (1983)). Butler could not argue in 1994, let alone at the hearing in 1995, which afforded him the opportunity to purge himself of civil contempt, that he had not possessed the $350,000 in 1992, or that the 1992 enforcement order was otherwise invalid.

Rather, Butler's only available defense at the 1995 contempt hearing, when he was facing incarceration for his long-term refusal to comply with the turnover order and the subsequent contempt order, was to assert "a present inability to comply with the order in question." Rylander, 460 U.S. at 757, Butler could seek to show only that he did not presently possess the funds to comply with the turnover order. As the Supreme Court explained in Rylander, "[w]here compliance is impossible, neither the moving party not the court has any reason to proceed with the civil contempt action. It is settled, however, that in raising this defense, the defendant has a burden of production." Id. Thus, in order to purge himself of civil contempt, Butler had to meet the burden of producing evidence that he presently lacked the funds to comply with the turnover order.

The Supreme Court's holding in Rylander clearly forecloses Butler's contention that the testimony he gave to meet his burden was "compelled" in violation of the Fifth Amendment. The defendant in Rylander, facing incarceration for his failure to turn over records that had been subpoenaed by the IRS, had sought to avoid cross-examination in a civil contempt proceeding as to his inability to produce those records. The Supreme Court rejected the argument that requiring the defendant to testify under those circumstances was "a form of compulsion which requires that the burden be shifted from the defendant's shoulders to that of the government." Id. at 758; cf. In re Grand Jury Subpoena Dated

April 9, 1996 v. Smith; 87 F.3d 1198, 1202 n.3 (11th Cir. 1996) (distinguishing Rylander, and permitting invocation of the Fifth Amendment, when defendant asserted her in ability to comply with a subpoena at the enforcement stage, rather than in contempt proceedings).

To avoid incarceration for civil contempt, Butler had to produce evidence demonstrating his present inability to turn over the $350,000. Instead of meeting this burden, he initially attempted to do precisely what the Supreme Court in Rylander held a defendant can not do: assert inability to comply with a court order, while at the same time refusing to answer any further questions on the issue through the invocation of his Fifth Amendment privilege. The district court in the contempt proceeding, cited Rylander, correctly denied Butler this option.

True, Butler found himself in a difficult position during the civil contempt proceedings. He faced the prospect of incarceration if he refused to account for the settlement proceeds; he feared that he would incriminate himself if he did testify. This pressure does not amount to "compulsion" under the Fifth Amendment, however. In Rylander, the Court likened the defendant, who faced a dilemma similar to Butler's, to a criminal defendant who must call witnesses to take the stand himself in order to support an alibi defense.

> When [the defendant] presents his witness, he must reveal their identity and submit them to cross-examination which in itself may prove incriminating or which may furnish the

> State with leads to incriminating rebuttal evidence. That the defendant faces such a dilemma demanding a choice between complete silence and presenting a defense has never been though an invasion of the privilege against compelled self-incrimination. The pressures generated by the State's evidence may be severe but they do not vitiate the defendant's choice to present an alibi defense and witnesses to prove it, even though the attempted defense ends in catastrophe for the defendant. However "testimonial" or "incriminating" the alibi defense proves to be, it cannot be considered compelled" within the meaning of the Fifth and Fourteenth Amendments.

Rylander, 460 U.S. at 759 (quoting Williams v. Florida, 399 U.S. 78 83-84 (1970)). Butler's 1995 testimony, which he successfully purged himself of civil contempt, likewise cannot be viewed as "compelled." See also Gniotek v. City of Philadelphia, 803 F.2d 241, 245-46 (3rd Cir. 1986) (finding no violation of Fifth Amendment when police officers, faced with evidence of corruption that constituted grounds for dismissal from their jobs, were dismissed after they refused to testify at a predeprivation hearing).

At oral argument, Butler focused his challenge on the alternative ruling of the district court in the contempt proceeding that, even if a witness in Butler's position ordinarily could invoke the Fifth Amendment, Butler had waived the privilege by submitting an

affidavit attesting to his present economic status and inability to pay the $350,000. In Rylander, the Supreme Court specifically refused to reach a similar waiver question. 460 U.S. at 761 n.2. We, too, need not reach the question of whether Butler waived his Fifth Amendment privilege.

We note, however, that this is not a case in which a party, seeking to avoid the sanction of contempt at the enforcement stage of a judicial order, submitted evidence as to inability to comply with the order. Finding such conduct to constitute a waiver of the privilege would, as the Eleventh Circuit has recognized, "create an intolerable result, placing [the party] in the produce the [evidence] that she did not have, or saying that she did not have the [evidence] and then being ordered to testify." In re Grand Jury Subpoena, 87 F.3d at 1204 (finding no waiver of privilege).

By contrast, in this case Butler did not attempt to testify at the enforcement stage of the turnover order under the protection of his Fifth Amendment privilege Rather, he ignored the turnover order and was held in contempt for doing so. To purge himself of contempt, he had to produce evidence of his inability to comply with the turnover order. His submission of an affidavit did not meet that burden; his testimony did. Butler made a difficult choice to testify rather than be incarcerated for civil contempt, but the severity of his dilemma did not transform his testimony at the contempt proceeding into "compelled" testimony for purposes of the Fifth Amendment. See Rylander, 460 U.S. at 758. For this

reason, nothing prevented the government from using Butler's prior testimony in the subsequent criminal case. See Fed. R. Evid. 801(d)(2); Harrison v. United States, 392 U.S. 219, 222 (1968) (finding defendant's statements at former trial admissible when not obtained in violation of Fifth Amendment). Accordingly, the district court did not err in permitting the introduction of this testimony at Butler's trial.

IV.

Finally, Butler argues that the district court erred in refusing to instruct the jury regarding his asserted reliance on the advice of counsel during the course of conduct that led to his conviction. Butler contends that, among the many attorneys who gave him advice during the relevant time period, at least one gave him advice so erroneously that it negated his intent to commit the crimes for which he was convicted.

The essential elements of the reliance-on-counsel defense are "(a) full disclosure of all pertinent facts to an expert, and (b) good faith reliance on the expert's advice." United States v. Miller, 658 F.2d 235, 237 (4th Cir. 1981). After reviewing the record, we find no evidence that would entitle Butler to an instruction regarding reliance on the advice of counsel in the context of any of his relevant interactions with attorneys.

V.

For the foregoing reasons, Butler's convictions and sentence are AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Filed
June 14, 2000

NO. 99-4153
RC-97-146-S

UNITED STATES OF AMERICA
Plaintiff-Appellee

v.

EDWARD R. BUTLER
Defendant-Appellant

By ORDER dated 5/22/00, the Clerk denied Appellant's petition for rehearing and rehearing en banc as untimely. Appellant has filed a Motion for Reconsideration of the Clerk's order.

Judges Luttig, Williams and Motz voted to deny the petitioner for rehearing.

No member of the Court requested a poll on the petition for rehearing en banc.

The Court grants the Motion for Reconsideration and denies the petition for rehearing and rehearing en banc.

Entered at the direction of Judge Motz for the Court.

For the Court,

/s/ Patricia S. Connor
Clerk

EXHIBIT (1) INDICTMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	:	
v.	:	Criminal No. S-97-0146
EDWARD R. BUTLER	:	(Bankruptcy Fraud, 18 U.S.C. §152; Monetary Transactions, 18 U.S.C 1957; Aiding and Abetting, 18 U.S.C. §2)

oo0oo

INDICTMENT

The Grand Jury for the District of Maryland charges that:

1. On or about July 25, 1990, EDWARD R. BUTLER filed a voluntary Petition for Bankruptcy, in the United States Bankruptcy Court for the District of Maryland, under Chapter 11 of the United States Bankruptcy Code.

2. On or about August 22, 1990, EDWARD R. BUTLER filed a Statement of Financial Affairs, which, among other matters, included a Statement of All Property of the Debtor. As part of said Statement, EDWARD R. BUTLER listed as an asset a liquidated debt, in the amount of $685,000, owed to said EDWARD R. BUTLER by Rhea, Inc. and Cornelius Showell.

3. On or about October 15, 1991, without approval from the United States Bankruptcy Court for the District of

Maryland, EDWARD R. BUTLER settled the claim against Rhema, Inc. and Cornelius Showell, receiving payment from Rhema, Inc. and Cornelius Showell in the amount of $350,000.

4. On or about April 15, 1992, Terry L. Musika was appointed as Interim Trustee for EDWARD R. BUTLER's bankruptcy estate.

5. On or about July 18, 1995, EDWARD R. BUTLER was discharged from bankruptcy by the United States Bankruptcy Court for the District of Maryland.

6. From on or about October 15, 1991 until July 18, 1995, in the State and District of Maryland and elsewhere, the defendant EDWARD R. BUTLER did knowingly and fraudulently conceal from his creditors, and from the bankruptcy trustee, in Bankruptcy case no. 90-5-3087-JS, In Re: Edward R. Butler, a bankruptcy case under Title 11 of the United States Bankruptcy Code, property belonging to the estate of the debtor Edward R. Butler, namely $350,000 in funds received from the settlement of a claim against Rhema, Inc. and Cornelius Showell.

18 U.S.C. Section 152
18 U.S.C. Section 2

COUNT II

And the Grand Jury fro the District of Maryland further charges that:

1. On or about September 9, 1992, in the State and District of Maryland and elsewhere, the defendant herein, EDWARD R. BUTLER did knowingly engage in a monetary transaction, in or affecting interstate commerce, in criminally

derived property having a value greater then $10,000 and which was derived from a specified unlawful activity, in that the defendant did cause Cashier's Check 10013034, in the amount of $30,000 to be purchased from the Maryland National Bank, Baltimore, Maryland, and to be made payable to Bishop Randolph Caines, which funds were the proceeds of a bankruptcy fraud, in violation of 18 U.S.C. § 152.

18 U.S.C. § 1957
18 U.S.C. § 2

COUNT III

And the Grand Jury for the District of Maryland further charges that:

1. On or about September 9, 1992, in the State and District of Maryland and elsewhere, the defendant herein, EDWARD R. BUTLER did knowingly engage in a monetary transaction, in or affecting interstate commerce, in criminally derived property having a value greater then $10,000 and which was derived from a specified unlawful activity, in that the defendant did cause Cashier's Check 10013035, in the amount of $29,000 to be purchased from the Maryland National Bank, Baltimore, Maryland, and to be made payable to Bishop Randolph Caines, which funds were the proceeds of a bankruptcy fraud, in violation of 18 U.S.C. § 152.

18 U.S.C. § 1957
18 U.S.C. § 2

COUNT IV

And the Grand Jury for the District of Maryland further charges that:

1. On or about November 30, 1992, in the State and District of Maryland and elsewhere, the defendant herein, EDWARD R. BUTLER did knowingly engage in a monetary transaction, in or affecting interstate commerce, in criminally derived property having a value greater then $10,000 and which was derived from a specified unlawful activity, in that the defendant did cause Cashier's Check 27-452099041, in the amount of $12,500 to be purchased from the John Hanson Savings Bank, Baltimore, Maryland, and to be made payable to "Bishop Randolph," which funds were the proceeds of a bankruptcy fraud, in violation of 18 U.S.C. § 152.

18 U.S.C. § 1957
18 U.S.C. § 2

COUNT V

And the Grand Jury for the District of Maryland further charges that:

1. On or about November 30, 1992, in the State and District of Maryland and elsewhere, the defendant herein, EDWARD R. BUTLER did knowingly engage in a monetary transaction, in or affecting interstate commerce, in criminally derived property having a value greater then $10,000 and which was derived from a specified unlawful activity, in that the defendant did cause Cashier's Check 10135326, in the amount of $45,500 to be purchased from the Maryland National Bank,

Baltimore, Maryland, and to be made payable to Bishop Randolph Caines, which funds were the proceeds of a bankruptcy fraud, in violation of 18 U.S.C. § 152.

18 U.S.C. § 1957
18 U.S.C. § 2

EXHIBIT (2) TURNOVER ORDER

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

IN RE:	*	
EDWARD R. BUTLER, 3087-JS	*	Case No. 90-5-
Debtor	*	(Chapter 11)
* * * * * *		
ROBERT B. SCARLETT, ESQUIRE HENSON AND SCARLETT 19 East Fayette Street Suite 401 Baltimore, Maryland 21202	*	
v.		Adversary No. *
91-5430-JS EDWARD R. BUTLER 7215 Croydon Road Baltimore, Maryland 21207	*	
and	*	
James C. Adkins 1776 Verbena Street, N.W. Washington, D.C. 20012	*	
* * * * * * * * * *		

ORDER DIRECTING EDWARD R. BUTLER AND JAMES C. ADKINS TO DEPOSIT ALL MONIES RECEIVED FROM THE SETTLEMENT WITH RHEMA DEVELOPMENT CORPORATION AND FRANKLIN AND ELLA SHOWELL INTO COURT'S ESCROW ACCOUNT REGISTRY

Upon the aforegoing Emergency Motion to Turnover Certain Estate Monies to Court's Escrow Account, it is this 18 day of November, 1991, by the United States Bankruptcy Court for the District of Maryland:

ORDERED; that Edward R. Butler and James C. Adkins shall deposit, within 2 days of the date of this Order, all monies they have received as a result of the settlement entered into in the adversary proceeding filed by Edward R. Butler against Franklin and Ella Showell and Rhema Development Corporation (Motion Nos.M91-0142 and M91-0143), in this Court's escrow account registry within 2 days of the date of this Order.

/s/ L. Edward Friend II
HONORABLE
L. EDWARD FRIEND III
UNITED STATES
BANKRUPTCY COURT JUDGE

ENTERED
NOV 21 1991
U.S. BANKRUPTCY COURT
BALTIMORE, MD

cc: Robert B. Scarlett, Esquire
Henson and Scarlett
19 East Fayette Street, Suite 401
Baltimore, Maryland 21201

Edward R. Butler
C/o The Palladium, Inc.
2900 Liberty Heights Avenue
Baltimore, Maryland 21215

Edward R. Butler
7215 Croydon Road
Baltimore, Maryland 21207

James C. Adkins
1776 Verbena Street, N.W.
Washington, D.C. 20012

Marc J. Lipchin, Esquire
Frank, Bernstein, Conway, and Goldman
300 East Lombard Street
Baltimore, Maryland 21202

Alan S. Kerxton, Esquire
Suite 775N, 4550 Montgomery Avenue
Bethesda, Maryland 20814

Office of the U.S. Trustee
Fallon Federal Building
31 Hopkins Plaza, Room G-13
Baltimore, Maryland 21201

EXHIBIT (3a) DOCKET SHEET ENTRIES

Date Meeting / /	Claim Deadline / /	Dist. No. 0416	Off. No. 1	Yr-Docket No. 90-59087-JS
Discharge	523/727 Complaint	Date Filed 7/25/90	Reopened	Joint Petitioner? F

Name of Debtor BUTLER, EDWARD	Name of Joint Debtor
AKA/DBA	AKA/DBA
SSAN or Tax ID 215-34-8891	SSAN or Tax ID
Address of Debtor 7215 Croydon Road Baltimore, MD 21207	Address of Joint Debtor

Name of County Baltimore, City MD	County Code 24510	Judge Name Schneider, James	Code A274	Trustee

Type of Case Voluntary	Commenced Under Chapter: 11 Converted to chapter 7 4/9/92	Nature of Debtor Business
ORG Form Individual		Type of BUS Other

Est. Number of Creditors 1 to 15	Est. Assets (in 000,s) 1000 & over	Est. Liabilities (in 000's) 1000 & over
Number of Employees 0	# equity security holders 0	Filing fee paid in: <<Full amount <<Installments

Attorney of Debtor Robert B. Scarlett 19 East Fayette Street, Suite 401 Baltimore, MD 21202	Trustee Terry L. Musika 2 North Charles Street Baltimore, MD 21201

Entry dt	Doc No	Case Record Entry	Entry dt	Doc No	Case Record Entry
7/25/90	1	Vol. Pet., Chpt. 11 List of Cred.	8/10/90	*	Claims Bar Date: 12/6/90

7/25/90	2	Order/Notice to file schedules.	/ /		Notice of Disch Hrng Hrng Date: Time Loc:
/ /			/ /		§341 Mtng Conducted
/ /			/ /		Discharge entered
8/10/90	3 See P.72	Notice of §341 mtng & Certif of mailing §341 Date; 9/6/90 §341 Time: 10:oo am §341 Location 54	/ /		Notice of discharge/ Certif of mailing
/ /	*	Last dt for dish/ dischblty complaints: / /	/ /		Trustee final report <<No Asset
/ /			/ /		

Date	Document Number	Bankruptcy Case Record (con't)
1990		
Aug. 22	4	Statement of Affairs, Schedules A & B, and Summary Sheet. Executory Contracts. /s/ (mc)
Aug. 30	-----	Motion for relief from stay. (M90-1775-JS) /s/ (Sonya Gershowitz Goodman)
Sept. 17	5	PRAECIP: U.S. Trustee 341 Meeting of Creditors continued to October 5, 1990 at 3:00 P.M. /s/ (mc)
Oct. 18	-----	Motion for relief from stay. (M90-2135-JS) (Resolution Trust Corporation)
Nov. 7	6	Motion for John Hanson Savings Bank to extend time for filing complaint. /s/ (mc)
Nov. 6	-----	Motion for relief from stay. (M90-2318-JS) (John Hanson Saving Bank, FSB)
Nov 14.	7	PRAECIP from U.S. Trustee – 341 meeting of creditors conducted on November 8, 1990.

		Plan of Reorganization to be filed by January 15, 1991. /s/ (mc)
Nov. 15	8	DENIED: Order extending time for complaint. P-6 /s/ (mc)
Nov 29	9	MONTHLL OPERATING REPORT for the period – October 1, 1990 through October 31, 1990. /s/ (mc)
Dec. 5	10	MOTION of U.S. Trustee to compel the filing of reports and certificate of service. /s/ (as)
Dec. 12	11	AMENDED voluntary petition – Exhibit B – Statement of affirs, list of 20 largest unsecured Creditors – Schedules A & B, Summary Sheet, and statement of executory contracts. (P-4) – /s/ (mc)
Dec. 12	12	DISCLOSURE STATEMENT Pursuant to Rule 2016(b). /s/ (mc)
Dec. 14	13	APPLICATION of debtor to employ Counsel – affidavit of Counsel attached. Robert B. Scarlett and law firm
Dec 19	14	ORDER authorizing appointment of attorney under a general retainer. P-13. /s/ (mc)
Dec. 27	15	MOTION of debtor to extend exclusive time for filing of Plan, Disclosure Statement, and solicitation of acceptances. /s/ (mc)
Dec. 27	16	NOTICE sent interesting parties and Creditors: RE:P-15 and certificate of service.
1991		
02/05/91	17	ORDER Entending Exclusive Time to File plan, Disclosure Statement and Soliciation of Acceptance (P.15, 16). /s/ (fh)
02/06/91	18	ORDER Compelling Debtor to File Monthly Operating Reports (P.10.). /s/ (fh)
02/26/91	19	INTERIM FINANCIAL REPORT for period of October 1, 1990 to October 31, 1990/ Certificate of Service. /s/ (fh)
02/26/91	20	INTERIM FINANCIAL REPORT for period of November 1, 1990 to November 30, 1990/ Certificate of Service. /s/ (fh)
02/26/91	21	INTERIM FINANCIAL REPORT for period

		of December 1, 1990 to December 31, 1990/ Certificate of Service. /s/ (fh)
02/26/91	22	INTERIM FINANCIAL REPORT for period of January 1, 1991 to January 31, 1991/ Certificate of Service. /s/ (fh)
02/28/91	23	MOTION of U.S. Trustt to Compel Payment of Quartly Fees or, in Default Thereof, for Conversion to Chapter 7/ Certificate of Service. /s/ (fh)
03/01/91	24	RESPONSE to U.S. Trustee Motion (P.23)/ Certificate of Service /s/ (fh)
03/01/91	25	PROCEEDING MEMO: Re: Hearing: Motion to Lift Stay; see memo. /s/ (as)
03/12/91	26	ORDER Requiring Debtor to Pay Quarterly Fees, (P.23). /s/ (fh)
04/26/91	-----	COMPLAINT for temporary restraining order and injunction. (A91-0142-JS) (John Hanson Savings Bank) /s/ (vh)
05/02/91	27	PLAN OF REORGANIZATION / Certificate of Service. /s/ (fh)
05/02/91	28	INTERIM FINANCIAL REPORT for period of February 1, 1991 to February 28, 1991/s/ (fh)
05/02/91	29	INTERIM FINANCIAL REPORT for period of March 1, 1991 to March 31, 1991/s/ (fh)
05/02/91	30	INTERIM FINANCIAL REPORT for period of April 1, 1991 to April 31, 1991/s/ (fh)
05/15/91	31	ORDER Fixing time for Filing of Disclosure Statement. (14 Days). /s/ (fh)
05/17/91	32	ORDER Assigning Cases to Bankruptcy Judge Schneider. /s/ (fh)
06/17/91	33	STIPULPULATION and CONSENT resolving motion to dismiss or convert. (Original in 90-5-3138-JS). /s/ (fh)
07/01/91	34	AMENDED Plan of Reorganization (P.27). /s/ (fh)
07/08/91	35	Interim Financial Report for period of May 1, 1991 through May 31, 1991. /s/ (fh)
07/08/91	36	Interim Financial Report for period of June 1, 1991 through June 30, 1991. /s/ (fh)

07/22/91	37	DISCLOSURE STATEMENT. /s/ (fh)
08/02/91	38	INTERIM FINANCIAL REPORT for Period July 1, 1991 through July 31, 1991. /s/ (fh)
08/14/91	39	NOTICE to Creditors of filing of disclosure statement. /s/ (fh)
08/14/91	40	NOTICE Fixing time for Filing Objections to Approval of Disclosure Statement. (OBJECTIONS: September 18, 1991)/ /s/ (fh)
08/14/91	41	ORDER Directing Debtor to Mail Notice on filing of Disclosure Statement. /s/ (fh)
08/02/91	42	MOTION of Diversified Leasing, Inc. for Relief from Automatic Stay. (Hearing scheduled for September 13, 1991 at 9:15 a.m. Stand-by). /s/ (fh)
08/02/91	43	ORDER directing course of proceeding on Motion (P.42). /s/ (fh)
08/20/91	44	ANSWER of Respondent to Motion (P.42). /s/ (fh)
08/26/91	45	Certificate of Service (P.43). /s/ (fh)
08/21/91	46	Certificate of Service (P.41). /s/ (fh)
09/04/91	46	INTERIM FINANCIAL REPORT for period August 1, 1991 through August 31, 1991. /s/ (fh)
09/18/91	47	OBJECTIONS of Resolution Trust Corp. to Disclosure Statement. /s/ (fh)
9/13/91	48	PROCEEDING MEMO: RE: HEARING – (PP. 42, 44) – CONTINUED. /s/ (fh)
10/9/91	49	PETITION of Virgil Kelly for hearing on claim. /s/ (fh)
10/21/91	50	INTERIM FINANCIAL REPORT for period of 9/91 through 9/30/91. /s/ (fh)
10/30/91	51	MOTION of State of MD, Comptroller of the Treasury to convert to Chapter 7 Proceeding. /s/ (fh)
11/4/91	52	NOTICE of Settlement which Rhema Development Corp. and Franklin & Ella Showell. /s/ (fh)
11/5/91	53	NOTICE of Objection to settlement (P.52)
11/6/91	54	MOTION of Unsecured creditor committee for appointment of trustee.

11/15/91	55	MOTION of Robert B. Scarlett to strike appearance of attorneys. /s/ (fh)
11/18/91	56	PROCEEDING MEMO: RE: HEARING – (P.55). /s/ (fh)
11/27/91	57	RESPONSE of debtor for appointment of trustee. /s/ (fh)
12/6/91	58	ORDER Striking appearance of attorneys (P.55) – DENIED 12/4/91 (P.55).
12/11/91	59	EMERGENCY MOTION for reconsideration of order denying withdrawal of appearance of Heneson & Scarlett (P.58).
12/17/91	60	ORDER Reconsidering order denying Heneson & Scarlett permission to withdraw their appearance for case is stricken. (P.58). /s/ (fh)
12/31/91	61	FINAL APPLICAION of Heneson & Scarlett for allowance of compensation. /s/ (fh)
12/31/91	62	NOTICE OF Application for final compensation (P.61)/ Certificate of Service. /s/ (fh)
1992		
1/15/92	63	HEARING on March 16, 1992 at 11 a.m. in room 9-D on (P.51) Motion to convert to chapter 7 proceeding by State of MD, Comptroller of the Treasury. Objections (P.47) to disclose statements (P.37) by Resolution Trust Corp. All interested parties. /s/ (jr)
1/10/92	64	NOTICE OF Motion of Sonya Goodman to request hearing. /s/ (fh)
1/14/92	65	NOTICE of Objection of Sonya Goodman to Application (P.61).
3/6/92	66	MOTION of U.S. Trustee to compel payment of quarterly fees or in default thereof, for conversion. /s/ (fh)
3/26/92	67	PROCEEDING MEMO: RE: HEARING – (P.51, 47, 37) – CASE CONVERTED TO CHAPTER 7. /s/ (fh)
4/1/92	68	HEARING set on June 15, 1992 at 3:00 p.m.

		in room 9-D on Objection by Sonya Goodman to an application for final compensation by Debtor's Attorney (p. 65) /s/ (jr)
4/9/92	69	ORDER Converting to Case Under Chapter 7 (P.51) /s/ (fh)
4/3/92	70	Certificate of Service of Subpoena to witness.
4/8/92	71	MOTION of Debtor to vacate order converting case to Chapter 7. /s/ (fh)
4/10/92	72	REQUEST of Debtor to extend time for filing Notice of Appeal. /s/ (fh)
4/10/92	73	REQUEST of Debtor for hearing on Motion to vacate converting case to Chapter 7. /s/ (fh)
04/30/92	74	APPOINTMENT OF Terry L. Musika (Chapter 7) Interim Trustee /s/ (sl)
5/1/92	75	NOTICE OF CHAPTER 7 FILING, MEETING OF CREDITORS AND FIXING OF DATES ON May 21, 1992 at 11:30 a.m. in room G-13. Proof of claim: August 19, 1992. Discharge of Dates: July 20, 1992. Sent to all Creditors. /s/ (jr)
4/21/92	76	AFFIDAVIT of Earnest Kromah in support of Motion to Vacate order converting case to Chapter 7. /s/ (fh)
4/22/92	77	MEMORANDUM of Debtor in support of Motion to vacate order converting case to Chapter 7 (P.69). /s/ (fh)
5/15/92	78	HEARING set on August 18, 1992 at 9:15 a.m. in room 9-D on Motion by Debtor (p. 71) to vacate order converting case to Chapter 7 (p. 73, 76, 77) /s/ (jr)
5/27/92	79	TRANSCRIPT of Hearing on 5/18/91 (P. 56) /s/ (cd)
5/27/92	80	NOTICE of Trustee Rescheduling 341 Meeting to June 19, 1992 at 4:00 p.m. /s/ (cd)
6/15/92	81	PROCEEDING MEMO: RE: HEARING - P. 65) – OBJECTION OVERRULED. /s/ (fh)
7/31/92	82	MOTION of Kenneth X. Warren for leave to withdraw appearance. /s/ (fh)
8/3/92	83	TRANSCRIPTS of November 18, 1991 and

		April 15, 1992 hearings. /s/ (fh)
8/18/92	84	PROCEEDING MEMO: RE: HEARING – (P. 73, 76, 77) – CONTINUED. /s/ (fh)
8/31/92	85	ORDER Granting Motion for Leave to Withdraw Appearance (P. 82) /s/ (cd)
9/2/92	86	NOTICE of Hearing on Motion (p. 73, 76, & 77) to Vacate Order Converting Case on November 30, 1992 at 11:00 a.m. in room 9-D. Sent to interested parties. /s/ (mb)
9/2/92	87	APPLICAION of Chapter 7 Trustee for Order Authorizing Employment f Whiteford, Taylor & Preston as Special Litigation Counsel and Affidavit of Counsel. /s/ (cd)
9/23/92	88	ORDER Authorizing Employment of Whiteford, Taylor & Preston as Special Litigation Counsel to Chapter 7 Trustee (P. 87) /s/ (cd)

EXHIBIT (3b) DOCKET SHEET ENTRIES

U.S. Bankruptcy Court

District of Maryland (Baltimore)

Adversary Proceeding #: 91-5430 Date filed: 11/15/91

Assigned to: James F. Schneider

Related Bankruptcy Case #: 90-53087

In Re: Edward R. Butler, Demand: $0,000 Nature of Suit: 454

Parties	*Attorneys*
ROBERT B. SCARLETT Plaintiff	Robert B. Scarlett Scarlett and Croll 201 N. Charles St., Ste. 600 Baltimore, MD 21201-4110 410-468-3100
v.	
EDWARD R. BUTLER 7215 Croydon Road Baltimore, MD 21207 SSN: 215-34-8891 *Defendant*	Meldon S. Hollis, Jr. [term 01/04/93] Tydings and Rosenberg 100 East Pratt Street Baltimore, MD 21202 410-752-9700
	William H. Murphy, Jr. 1007 North Calvert Street Baltimore, MD 21201 410-539-6500
JAMES C. ADKINS *Defendant*	Paul H. Zukerberg 1790 Lanier Place, NW Washington, DC 20009-2116 202-588-3788
TERRY L. MUSIKA 2 North Charles Street Baltimore, MD 21201 *Trustee*	Paul M. Nussbaum Whiteford, Taylor & Preston 7 St. Paul St., #1400 Baltimore, MD 21202 410-347-8700

Docket Proceedings

Date	Doc. No.	Docket Entry
11/15/91	1	Complain (91-5430) Robert B. Scarlett, vs. Edward R. Butler (to turnover certain estate monies to Court's Escrow Account. NOS 454 Recover Money/Property. (Filing Fee $120.00 Receipt #12855)(shin)[EOD 11/15/91][91-5430]
11/15/91	---	One Summons9es) Issued on James C. Adkins in 91-05430, Edward R. Butler in 91-05430; Pre-Trial Conference Set For 11:30 1/27/92 at Room 919, Baltimore (shin) [EOD 11/15/91][91-5430]
11/15/91	2	Emergency Motion by Plaintiff Robert B. Scarlett to Turnover certain Estate Monies to Court's Escrow Account (shin)[EOD 11/15/91][91-5430]
11/15/91	3	Notice of Motion RE: [2-1] Motion to Turnover certain Estate Monies to Court's Escrow Account by Robert B. Scarlett. Notice Served On: 11/15/91; Objections to Motion Due: 12/5/91 (shin)[EOD 11/15/91][91-5430]
11/18/91	4	Hearing Held Re: [2-1] Motion to Turnover certain Estate Monies to Court's Escrow Account by Robert B. Scarlett –GRANTED. (hers) [EOD 11/21/91][91-5430]
11/19/91	6	Certificate Of Service By Plaintiff Robert B. Scarlett Of [5-1] Order Directing Edward R. Butler and James C. Adkins to deposit all monies received from the settlement with Rhema Development Corp. and Franklin and Ella Showell into Court's Escrow account registry. (hers) [EOD 12/10/91][91-5430]
11/21/91	5	Order Granting [2-1] Motion to Turnover

		certain Estate Monies to Court's Escrow Account by Robert B. Scarlett. (hers) [EOD 11/21/91][91-5430]
11/22/91	7	Motion By Defendant James C. Adkins To Stay [5-1] Order to turnover certain estate monies to court's escrow account. (hers) [EOD 12/10/91][91-5430]
11/22/91	8	Memorandum of Law RE:[7-1] Motion To Stay [5-1] Order to turnover certain estate monies to court's escrow account by James C. Adkins (hers) [EOD 12/10/91][91-5430]
12/2/91	—	Added Attorney Meldon S. Hollis Jr. (hers) [EOD 01/02/92][91-5430]
12/10/91	9	Response By Plaintiff Robert B. Scarlett To [2-1] Motion to Turnover certain Estate Monies to Court's Escrow Account by Robert B. Scarlett. (hers) [EOD 01/03/92][91-5430]
12/17/91	—	Added Attorney Meldon S. Hollis Jr. (hers) [EOD 12/17/91][91-5430]
1/24/92	10	Motion By Defendant Edward R. Butler To Vacate [5-1] or for stay of Order to turnover certain estate monies to court's escrow account. (hers) [EOD 01/28/92][91-5430]
1/27/92	11	Hearing Held Re:[1-1] Complaint NOS 454 Recover Money/Property. (hers) [EOD 02/28/92][91-5430]
2/28/92	—	Hearing Re:[5-1] Order scheduled For 9:15 3/16/92 at Room 9-D, Baltimore (hers) [EOD 02/28/92][91-5430]
3/6/92	14	Motion By Creditor Resolution Trust Corp. To Intervene Re: [1-1] Complaint NOS 454 Recover Money/Property. (hers) [EOD 03/17/92]
3/9/92	12	Motion Robert B. Scarlett for Plaintiff Robert B. Scarlett To reschedule Hearing Re: [2-1] Motion to Turnover certain Estate Monies to Court's Escrow

		Account by Robert B. Scarlett. (hers) [EOD 03/17/92][91-5430]
3/11/92	13	Motion By Defendant Edward R. Butler To reschedule Hearing Re: [2-1] Motion to Turnover certain Monies to Court's Escrow Account by Robert B. Scarlett. (hers) [EOD 03/17/92][91-5430]
3/17/92	15	Order Granting [12-1] Motion to reschedule Re: [2-1] Motion to Turnover certain Estate Monies to Court's Escrow Account by Robert B. Scarlett by Robert B. Scarlett. (hers) [EOD 03/17/92][91-5430]
3/17/92	---	Hearing Re: [2-1] Motion to Turnover certain Estate Monies to Court's Escrow Account by Robert B. Scarlett rescheduled For 2:00 4/15/92 at Room 9-D, Baltimore (hers) [EOD 03/17/92][91-5430]
3/17/92	16	Hearing Held Re: [5-1] Order. (hage) [EOD 04/29/92][91-5430]
4/15/92	18	Motion by Defendant Edward R. Butler to dismiss complaints to turnover certain estate monies to court's escrow account (hers) [EOD 04/29/92][91-5430]
4/15/92	---	Added Attorney A. Dixon (hers) [EOD 05/01/92][91-5430]
4/15/92	23	Motion by Attorney Timothy A. Dixon for special admission of out-of-state attorney (hers) [EOD 06/17/92][91-5430]
4/22/92	17	Order Authorizing Deposit of Funds into Court Registry in the amount of $19,683.11 receipt 108251. (hage) [EOD 04/22/92][Edit date 04/22/92][91-5430]
4/27/92	19	Motion By Defendant Edward R. Butler To Vacate [17-1] Order of April 15, 1992 directing debtor to deposit all monies received into court registry. (hers) [EOD 04/29/92][91-5430]
4/27/92	20	Motion By Defendant Edward R. Butler

		To extend Time filing notice of appeal. (hers) [EOD 04/29/92] [91-5430]
6/2/92	21	Order Denying [19-1] Motion To Vacate [17-1] Order of April 15, 1992 directing debtor to deposit all monies received into court registry by Edward R. Butler. (hers) [EOD 06/02/92] [91-5430]
6/2/92	22	Order for Civil Contempt and Judgment. (hers) [EOD 06/02/92] [91-5430]
6/3/92	24	Request of Attorney Timothy A. Dixon to withdraw appearance. (hers) [EOD 06/17/92] [91-5430]
6/3/92	—	Terminated Attorney Timothy A. Dixon (hers) [EOD 06/17/92] [91-5430]
6/8/92	25	Transcript of Hearing Held on 4/15/92 (hers) [EOD 06/17/92] [91-5430]
6/19/92	26	Motion by Defendant James C. Adkins to alter and amend order for summary contempt and judgment, for a hearing to establish addition facts, and for a new trial. (hers) [EOD 06/29/92] [91-5430]
6/19/92	27	Request by Defendant James C. Adkins for jury trial and request for transfer to the District Court. (hers) [EOD 06/29/92] [91-5430]
6/19/92	28	Brief/Memorandum By Defendant James C. Adkins In Support Of [27-1] Request by James C. Adkins for jury trial and request for transfer to the District Court. (hers) [EOD 06/29/92] [91-5430]
6/19/92	29	Motion by Defendant James C. Adkins to withdraw the referral of his adversary proceeding from the Bankruptcy Court with incorporated points and authorities. (hers) [EOD 06/29/92] [91-5430]
6/19/92	30	Motion by Defendant James C. Adkins to stay with points and authorities (hers) [EOD 06/29/92][91-5430]
6/19/92	31	Notice of Appearance And Request For Service Of Notice By Paul H. Zukerberg

		for Defendant James C. Adkins. (hers) [EOD 06/29/92][91-5430]
6/19/92	32	Answer To Complaint by Defendant James C. Adkins. (hers) [EOD 06/29/92][91-5430]
6/19/92	33	Notice Of Appeal By Edward R. Butler Appellant Designation Due: 6/29/92 RE: [22-1] Order for Civil Contempt and Judgment 9kapl0 [EOD 07/08/92] [91-5430]
6/19/92	34	Motion By Defendant James C. Adkins To extend Time for Filing of Appeal. (kapl) [EOD 07/08/92] [91-5430]
7/1/92	35	Response By Creditor Resolution Trust Corp. To [20-1] Motion To extend Time filing notice of appeal by Edward R. Butler. (davi) [EOD 07/07/92] Response By Creditor Resolution Trust Corp. To [26-1] Motion to alter and amend order for summary contempt and judgment, for a hearing to establish addition facts, ad for a new trial. By James C. Adkins. (davi) [EOD 07/07/92][Edit date 07/08/92] [91-5430]
7/1/92	36	Response By Creditor Resolution Trust Corp. To [26-1] Motion to alter and amend order for summary contempt and judgment, for a hearing to establish addition facts, ad for a new trial. By James C. Adkins. (davi) [EOD 07/07/92][Edit date 07/08/92][91-5430]
7/1/92	37	Response By Creditor Resolution Trust Corp. To [29-1] Motion to withdraw the referral of this adversary proceeding from the Bankruptcy Court with incorporated points and authorities. By James C. Adkins (davi0 [EOD 07/07/92][Edit date 07/08/92] [91-5430]
7/9/92	38	Order Denying [26-1] Motion to alter and amend order for summary contempt and

		judgment, for a hearing to establish addition facts, and for a new trial. By James C. Adkins. (harp) [EOD 07/09/92] [Edit date 07/09/92][91-5430]
7/9/92	39	Order Denying [30-1] Motion to stay with points and authorities by James C. Adkins. (harp) [EOD 07/09/92][Edit date 07/09/92] [91-5430]
7/9/92	40	Order Denying [34-1] Motion To extend Time for Filing of Appeal by James C. Adkins. (harp) [EOD 07/09/92][Edit date 07/09/92] [91-5430]
7/9/92	---	File Sent To U.S. District Court. (harp) [EOD 07/09/92] [91-5430]
7/9/92	43	Response By Defendant James C. Adkins To [34-1] Motion To extend Time for Filing Appeal by James C. Adkins, [30-1] Motion to stay with points and authorities by James C. Adkins, [29-1] Motion to withdraw the referral of this adversary proceeding from the Bankruptcy Court with incorporated points and authorities. By James C. Adkins, [27-1] Request by James C. Adkins, [26-1] Motion to alter and amend order for summary contempt and judgment, for a hearing to establish addition facts, and for a new trial. By James C. Adkins. (hers) EOD 07/22/92] [91-5430]
7/13/92	44	Response By Creditor Resolution Trust Corp. To [30-1] Motion to stay with points and authorities by James C. Adkins. (hers) [EOD 07/22/92] [91-5430]
7/13/92	45	Response By Creditor Resolution Trust Corp. To [27-1] Request by James C. Adkins for jury trial for transfer to the District Court. (hers) [EOD 07/22/92] [91-5430]
7/14/92	41	Notice Of Appeal By James C. Adkins Appellant Designation Due: 7/24/92 RE:

		[40-1] Order, [39-1] Order, [38-1] Order (harm) [EOD 07/14/92] [91-5430]
7/15/92	42	Notice of Service of Request for Production of Documents and Things (davi) [EOD 07/21/92] [91-5430]
7/15/92	47	Supplemental Notice Of Appeal By James C. Adkins Appellant Designation Due: 7/27/92 RE: [22-1] Order (harm) [EOD 07/27/92] [91-5430]
7/20/92	46	Objection By Defendant James C. Adkins To [8-1] Law Memorandum. (hers) [EOD 07/22/92] [91-5430]
7/31/92	—	Receipt for Record on Appeal. (92-CV-1917)(hers) [EOD 08/11/92] [91-5430]
8/6/92	49	Response By Plaintiff Robert B. Scarlett To [46-1] Objection to proposed findings of fact and conclusions of law by James C. Adkins. (hers) [EOD 08/19/92] [91-5430]
8/14/92	48	Response By Plaintiff Robert B. Scarlett To [46-1] Objection to proposed findings of fact and conclusions of law by James C. Adkins. (hers) [EOD 08/18/92] [91-5430]
8/17/92	50	Appellant's Designation By James C. Adkins Of Contents For Inclusion In Record On Appeal Re: [47-1] Notice Of Appeal by James C. Adkins, [41-1] Notice of Appeal by James C. Adkins; Appellee Designation Due: 8/24/92 Transmission Due: 9/16/92 (ship) [EOD 08/20/92] [91-5430]
10/13/92	51	Notice of Service of Deposition Duces Tecum of Edward Butler in Aid of Enforcement of Money Judgment. (davi) [EOD 10/14/92] [91-5430]
10/13/92	53	Letter of Defendant Edward R. Butler Releasing Melton Hollis as Counsel (davi) [EON 10/16/92] [91-5430]
10/15/92	52	Notice of Docketing Record on Appeal

		RE: [47-1] Notice of Appeal by James C. Adkins (HAR-92-2419)(harm) [EOD 10/15/92] [91-5430]
10/21/92	54	Notice of Deposition Decus Tecum of James C. Adkins in Aid of Enforcement of Money Judgment filed by Plaintiff. (vinc) [EOD 10/27/92] [91-5430]
10/27/92	55	Motion by Trustee Terry L. Musika for Entry of a Show Cause Order Against James C. Adkins (vinc) [EOD 10/29/92] [91-5430]
10/27/92	56	Memorandum of Points and Authorities in Support of RE: [55-1] Motion for Entry of a Show Cause Order Against James C. Adkins by Terry L. Musika (vinc) [EOD 10/29/92] [91-5430]
11/4/92	57	Response By Defendant James C. Adkins To [55-1] Motion for Entry of a Show Cause Order Against James C. Adkins by Terry L. Musika, [56-1] Law Memorandum. (vinc) [EOD 12/04/92] [91-5430]
11/9/92	59	Notice of Withdrawal of Appearance Filed by Meldon S. Hollis for Defendant Edward R. Butler. (vinc) [EOD 01/04/93] [91-5430]
11/12/92	58	Amended Motion by Trustee Terry L. Musika for Entry of a Show Cause Order Against James C. Adkins. RE: [55-1] Motion for Entry of a Show Cause Order Against James C. Adkins (vinc) [EOD 12/04/92] [91-5430]
12/8/92	60	Request of Terry L. Musika for an Order of Examination for Edward R. Butler in Aid of Enforcement of Money Judgment. (vinc) [EOD 01/04/93] [91-5430]
12/9/92	61	Motion by Defendant James C. Adkins to Determine the Portion of the Proceeds Due to James C. Adkins, to Administer Assets of the Estate and to Clarify the

		Orders of this Court (vinc) [EOD 01/04/93] [91-5430]
12/9/92	62	Request By Defendant James C. Adkins For Hearing Re: [61-1] Motion to Determine the Portion of the Proceeds Due to James C. Adkins, to Administer Assets of the Estate and to Clarify the Orders of this Court by James C. Adkins. (vinc) [EOD 01/04/93] [91-5430]
12/18/92	63	Request By Terry Musika For Hearing Re: [58-1] Amended Motion for Entry of a Show Cause Order Against James C. Adkins by Terry L. Musika. (vinc) [EOD 01/04/93] [91-5430]
1/4/93	---	Terminated attorney Meldon S. Hollis for Edward R. Butler. (vinc) [EOD 01/04/93] [91-5430]
1/12/93	64	Motion By Trustee Terry L. Musika To Compel Defendant James C. Adkins to Appear at a Deposition in Aid of Enforcement of Money Judgment and Certification of Efforts to Resolve Discovery Dispute Pursuant to Local Bankruptcy Rule 42(g). (vinc) [EOD 01/19/93][91-5430]
1/12/93	65	Request of Trustee Terry L. Musika fro and Order of Examination for James C. Adkins in Aid of Enforcement of Money Judgment. (vinc) [EOD 01/19/93] [91-5430]
2/3/93	71	Request of Trustee Terry L. Musika to for Writ of Garnishment (Riggs National Bank)(Adkins). (vinc) [EOD 03/24/93] [91-5430]
2/3/93	73	Request of Trustee Terry L. Musika for Issuance of Writ of Garnishment (First National Bank)(Butler). (vinc) [EOD 03/24/93] [91-5430]
2/3/93	75	Request of Trustee Terry L. Musika for Issuance of Writ of Garnishment (Bank

		of Baltimore). (vinc) [EOD 03/24/93] [91-5430]
2/3/93	77	Request of Trustee Terry L. Musika for Issuance of Writ of Garnishment (Harbor Bank)(Butler). (vinc) [EOD 03/24/93] [91-5430]
2/3/93	79	Request of Trustee Terry L. Musika for Issuance of Writ of Garnishment (Maryland National Bank)(Butler). (vinc) [EOD 03/24/93] [91-5430]
2/3/93	81	Request of Trustee Terry L. Musika for Issuance of Writ of Garnishment (Signet Bank)(Butler). (vinc) [EOD 03/24/93] [91-5430]
2/3/93	83	Request of Trustee Terry L. Musika for Issuance of Writ of Garnishment (Riggs National Bank)(Butler). (vinc) [EOD 03/24/93] [91-5430]
2/3/93	85	Request of Trustee Terry L. Musika for Issuance of Writ of Garnishment (Provident Bank of Maryland)(Butler). (vinc) [EOD 03/24/93] [91-5430]
2/3/93	87	Request of Trustee Terry L. Musika for Issuance of Writ of Garnishment (Citizens Bank of Maryland)(Butler). (vinc) [EOD 03/24/93] [91-5430]
2/3/93	89	Request of Trustee Terry L. Musika for Issuance of Writ of Garnishment (NationsBank)(Butler). (vinc) [EOD 03/24/93] [91-5430]
2/3/93	91	Request of Trustee Terry L. Musika for Issuance of Writ of Garnishment (Crestar Bank of Maryland)(Butler). (vinc) [EOD 03/24/93] [91-5430]
2/8/93	67	Renewed Request By Trustee Terry L. Musika For Hearing Re: [58-1] Amended Motion for Entry of a Show Cause Order Against James C. Adkins by Terry L. Musika. (vinc) [EOD 02/11/93][91-5430]
2/8/93	72	Writ of Garnishment of Property to Riggs

		National Bank (vinc)
2/8/93	74	Writ of Garnishment to First National Bank (Butler). (vinc) [EOD03/24/93][91-5430]
2/8/93	76	Writ of Garnishment of Property (Bank of Baltimore) (Butler). (vinc) [EOD03/24/93][91-5430]
2/8/93	78	Writ of Garnishment of Property (Harbor) (Butler). (vinc) [EOD03/24/93][91-5430]
2/8/93	80	Writ of Garnishment of Property (Maryland National Bank) (Butler). (vinc) [EOD03/24/93][91-5430]
2/8/93	82	Writ of Garnishment of Property (Signet Bank of Maryland) (Butler). (vinc) [EOD03/24/93][91-5430]
2/8/93	84	Writ of Garnishment of Property (Riggs National Bank) (Butler). (vinc) [EOD03/24/93][91-5430]
2/8/93	86	Writ of Garnishment of Property (Provident Bank of Maryland) (Butler). (vinc) [EOD03/24/93][91-5430]
2/8/93	88	Writ of Garnishment of Property (Citizens Bank of Maryland) (Butler). (vinc) [EOD03/24/93][91-5430]
2/8/93	90	Writ of Garnishment of Property (NationsBank) (Butler). (vinc) [EOD03/24/93][91-5430]
2/8/93	92	Writ of Garnishment of Property (Crestar Bank of Maryland) (Butler). (vinc) [EOD03/24/93][91-5430]
2/11/93	66	Hearing Re: [58-1] Amended Motion for Entry of a Show Cause Order Against James C, Adkins by Terry L. Musika Scheduled For 2:00 3/24/93 at Room 9-D, Baltimore (vinc) [EOD 02/11/93] [91-5430]
2/18/93	93	Response By Provident Bank of Maryland To [86-1] Writ of Garnishment. (vinc) [EOD 03/24/93][91-

		5430]
2/22/93	94	Response By Riggs National Bank To [72-1] Writ of Garnishment (Adkins). (vinc) [EOD 03/24/93][91-5430]
2/22/93	95	Response By Riggs National Bank of Washington To [84-1] Writ of Garnishment (Butler). (vinc) [EOD 03/24/93][91-5430]
2/22/93	96	Response By NationsBank To [90-1] Writ of Garnishment. (vinv) [EOD 03/24/93][91-5430]
2/25/93	97	Certificate Of Service By Michael D. Oliver Re: Writs of Garnishment. (vinc) [EOD 03/24/93][91-5430]
3/2/93	68	Motion By Defendant James C. Adkins To Reschedule Hearing Re: [55-1] Motion for Entry of a Show Cause Order Against James C. Adkins by Terry L. Musika. (hers) [EOD 03/12/93][91-5430]
3/3/93	98	Response By Crestar Bank To [91-1] Writ of Garnishment. (vinc) [EOD 03/24/93][91-5430]
3/5/93	99	Response By Citizens Bank of Maryland To [88-1] Writ of Garnishment. (vinc) [EOD 03/24/93][91-5430]
3/11/93	100	Response By Maryland National Bank To [80-1] Writ of Garnishment. (vinc) {EOD 03/24/93][91-5430]
3/12/93	101	Response By Signet Bank To [82-1] Writ of Garnishment. (vinc) [EOD 03/24/92][91-5430]
3/17/93	69	Order Granting [68-1] Motion To Reschedue Hearing Re: [55-1] Motion for Entry of a Show Cause Order Against James C. Adkins by Terry L. Musika by James C. Adkins Hearing reset To 9:15 3/31/93 at Room 9-D, Baltimore. (vinc) [EOD 03/17/93][91-5430]
3/17/93	70	Line Filed by Trustee Terry L. Musika Requesting Interlineation onCaption of

		Garnishments. Garnishments were incorrectly filed in 90-5-3087. (vinc) [EOD 03/24/93][91-5430]
3/22/93	102	Motion By Defendant James C. Adkins To Rescjedule Hearing Re: [55-1] Motion for Entry of a Show Cause Order Against James C. Adkins by Terry L. Musika currently scheduled for 3/32/93. (vinc) [EOD 03/25/93][91-5430]
3/25/93	105	Memorandum of Law RE: [55-1] Motion for Entry of a Show Cause Order Against James C. Adkins by Terry L. Musika (vinc) [EOD 04/08/93][91-5430]
3/26/93	103	Order Granting [102-1] Motion To Reschedule Hearing Re: [55-1] Motion for Entry of a Show Cause Order Against James C. Adkins by Terry L. Musika by James C. Adkins Hearing reset To 10:00 4/7/93 at Room 9-D, Baltimore. (Vinc) [EOD 03/26/93][91-5430]
4/1/93	104	Motion by Trustee Terry L. Musika in Limine to Preclude Introduction of Evidence by James C. Adkins at Hearing on Motion to Show Cause (vinc) [EOD 04/08/93][91-5430]
4/1/93	106	Motion by Defendant James C. Adkins to postpone Further Hearings Pending a Decision by the USDC of Appeals for the Fourth Circuit (vinc) [EOD 04/08/93][91-5430]
4/5/93	107	Objection By Terry L. Musika To [106-1] Motion to Postpone Further Hearing Pending a Decision by the USDC of Appeals for the Fourth Circuit by James C. Adkins. (vinc)
4/6/93	108	Motion By Interested Party Mark H. Friedman To Quash Subpoena. (vinc) {EOD 04/08/93][91-5430]
4/7/93	109	Objection By Defendant James C. Adkins To [104-1] Motion in Limine to Preclude

		Introduction of Evidence by James C. Adkins at Hearing on Motion to Show Cause by Terry L. Musika. (vinc) [EOD 04/08/93][91-5430]
4/7/93	110	Hearing Held Re: [58-1] Amended Motion for Entry of a Show Cause Order Against James C. Adkins by Terry L. Musika. Show Cause Order to be issued vs. Adkins & Butler. (vinc) [EOD 04/08/93][91-5430]
4/16/93	111	Objection By Defendant James C. Adkins To Proposed Order Submitted by Trustee Regarding Show Cause Directed to James C. Adkins. (vinc) [EOD 04/21/93][91-5430]
4/22/93	112	Response By Trustee Terry L. Musika To [111-1] Objection by James C. Adkins to Proposed Show Cause Order. (vinc) [EOD 04/23/93][91-5430]
4/23/93	113	Order To Show Cause why Adkins C. Adkins should not be Incarcerated for Failure to Comply with Order of the Court; Response Due: 5/23/93 (vinc) [EOD 04/23/93][91-5430]
4/23/93	114	Order To Show Cause why Edward R. Butler should not be Incarcerated for Failure to Comply with Order of the Court; Response Due: 5/23/93 (vinc) [EOD 04/23/93][91-5430]
4/27/93	115	Transcript of Hearing on Whether to Issue a Second Show Cause Order as to Adkins and Butler Before the Honorable James F. Schneider, U.S. Bankruptcy Judge, Held on 4/7/93 (vinc) [EOD 04/28/93][91-5430]
5/5/93	116	Motion By Defendant Edward R. Butler To Extend Time To File an Answer to Show Cause Order. (vinc) [EOD 05/13/93][91-5430]
5/18/93	117	Motion By Defendant Edward R. Butler

		To Reconsider [114-1] Show Cause Order. (vinc) [EOD 05/21/93][91-5430]
5/18/93	118	Request By Defendant Edward R. Butler For Hearing Re: To Continue to Disqualify Trustee's Representation by Whiteford, Taylor & Preston as it relates to Edward R. Butler. (vinc) [EOD 05/21/93][91-5430]
5/21/93	119	Response By Defendant James C. Adkins To [113-1] Show Cause Order and Motion to Dismiss Same, with Incorporated Points and Authorities. (vinc) [EOD 05/24/93][91-5430]
5/24/93	120	Motion By Defendant Edward R. Butler To Extend Time To Answer Show Cause Order. (vinc) [EOD 05/24/93][91-5430]
5/27/93	123	Motion By Trustee Terry L. Musika To Extend Time To Respond to Adkins' Reply to Show Cause Order. (vinc) [EOD05/26/93][91-5430]
5/28/93	121	Order Denying [117-1] Motion To Reconsider [114-1] Show Cause Order by Edward R. Butler Denying [116-1] Motion To Extend Time To File an Answer to Show Cause Order by Edward R. Butler. Vinv) [EOD 05/28/93][91-5430]
5/28/93	122	Order Denying [120-1] Motion To Extend Time To Answer Show Cause Order by Edward R. Butler. (vinc) [EOD 05/28/93][91-5430]
6/2/93	124	Response By Defendant Edward R. Butler To [114-1] Show Cause Order. (vinc) [EOD 06/03/93][91-5430]
6/17/93	125	Response By Trustee Terry L. Musika To [119-1] Response by James C. Adkins to Show Cause Order. (vinc) [EOD 06/22/93][91-5430]
6/17/93	126	Response By Trustee Terry L. Musika To [124-1] Response by Edward R. Butler to

		Show Cause Ordeer. (vinc) [EOD 06/22/93][91-5430]
6/22/93	127	Supplemental Response By Terry L. Musika To [119-1] Response by James C. Adkins to Order to Show Cause. (vinc) [EOD 06/22/93][91-5430]
6/22/93	128	Order Granting [123-1] Motion To Extend Time To Respond to Adkins' Reply to Show Cause Order by Terry L. Musika. (vinc) [EOD 06/22/93][91-5430]
6/30/93	129	Renewed Motion By Trustee Terry L. Musika To Compel Adkins to Appear at Deposition in the Aid of Enforcement of Money Judgment and Certificate of Effort to Resolve Discovery Dispute Pursuant t Local Bankruptcy Rule 42(g). (vinc) [EOD 07/01/93][91-5430]
6/30/93	130	Renewed Motion By Terry L. Musika To Compel Defendant Butler to Appear at Deposition in the Aid of Enforcement of Money Judgment and Certificate of Effort to Resolve Discovery Dispute Pursuant to Local Bankruptcy Rule 42(g). (vinc) [EOD 07/01/93][91-5430]
7/7/93	131	Response By Defendant James C. Adkins To [127-1] Response By Terry L. Musika. (vinc) [EOD 07/08/93][91-5430]
7/7/93	132	Request By Defendant James C. Adkins For Hearing Re: [113-1] Show Cause Order, [119-1] Response by James C. Adkins, [127-1] Supplemental Response by Terry L. Musika, [131-1] Response by James C. Adkins. (Vinc) [EOD 07/08/93][91-5430]
7/12/93	133	Objection By Defendant James C. Adkins To [129-1] Motion To Compel Adkins to Appear at Deposition in the Aid of Enforcement of Money Judgment and Certificate of Effort to Resolve Discovery Dispute Pursuant to Local Bankruptcy

		Rule 42(g) by Terry L. Musika. (vinc) [EOD 07/14/93][91-5430]
7/12/93	134	Notice of Service of Discovery Material/Interrogatories. (vinc) [EOD 07/14/93][91-5430]
7/16/93	135	Copy of Subpoena in Adversary Proceedings to Franklin Cornelius Showell filed by Trustee Terry L. Musika (vinc) [EOD 07/20/93][91-5430]
7/23/93	136	Copy of Subpoena in an Adversary Proceeding served on Franklin Cornelius Showell, filed by Kenneth Oestricher, Special Counsel for Truustee Terry L. Musika (vinc) [EOD 07/26/93][91-5430]
7/27/93	137	Response By Trustee Terry L. Musika To [61-1] Motion to Determine the Portion of the Proceeds Due to James C. Adkins, to Administer Assets of the Estate and to Clarify the Orders of this Court by James C. Adkins. (vinc) [EOD 07/29/93][91-5430]
8/10/93	138	Order Denying [132-1] Hearing Request by James C. Adkins. (vinc) [EOD 08/10/93][91-5430]
8/12/93	139	Hearing Re: [113-1] Show Cause Order Scheduled For 10:00 10/12/93 at Room 9-D, Baltimore (vinc) [EOD 08/12/93][91-5430]
8/17/93	140	Notice of Service of Deposition of Franklin Cornelius Showell filed by Trustee. (elia) [EOD 08/25/93][91-5430]
8/26/93	141	Copy of Subpoena in an Adversary Proceedings served on Franklin Cornelius Showell, by Trustee Terry L. Musika (vinc) [EOD 09/01/93][91-5430]
9/9/93	142	Notice of Service of Deposition by Terry L. Musika. (vinc) [EOD 09/14/93][91-5430]
9/15/93	143	Motion By Defendant James C. Adkins To Continue Hearing Re: [113-1] Show

		Cause Order (vinc) [EOD 09/17/93][91-5430]
9/17/93	144	Notice to Party Filing Deficient Pleading. (Order to Motion to Continue Hearing improper). (vinc) [EOD 09/17/93][91-5430]
9/17/93	145	Notice of Service of Deposition in reference to St. Bernardine's Rectory a/k/a/ St. Bernadine's Church. (vinc) [EOD 09/20/93][91-5430]
9/17/93	146	Notice of Service of Deposition in reference to First American Bank of Maryand. (vinc) [EOD 09/20/93][91-5430
9/20/93	149	Subpoena in an Adversary Proceeding served on St. Bernadine's Rectory by Kenneth Oestricher, Esquire, Special Counsel for the Chapter 7 Trustee Terry L. Musika (vinc) [EOD 09/24/93][91-5430]
9/21/93	147	Objection By Trustee Terry L. Musika To [142-1[Motion TO Continue Hearing Re: [113-1] Show Cause Order by James C. Adkins. (vinc) [EOD 09/22/93][91-5430]
9/23/93	148	Order Granting [143-1] Motion To Continue Hearing Re: [113-1] Show Cause Order by James C. Adkins. (hage) [EOD 09/23/93][91-5430]
9/23/93	150	Copy of Subpoena in an Adversary Proceedings served on Edward Butler by Kenneth Oestricher, Special Counsel to Trustee Terry L. Musika (vinc) [EOD 09/28/93][91-5430]
9/28/93	151	Copy of Subpoena in an Adversary Proceeding served on Franklin Cornelius Showell by Michael D. Oliver, Counsel for Trustee Terry L. Musika (vinc) [EOD 09/30/93][91-5340]
9/28/93	152	Copy of Subpoena in an Adversary Proceeding served on Harbor Bank of

		Maryland (Joseph Haskins) by Michael D. Oliver, Counsel for Trustee Terry L. Musika (vinc) [EOD 09/30/93][91-5340]
10/1/93	153	Copy of Subpoena in an Adversary Proceeding served on Franklin Showell, issued by Paul Zukerberg, Special Counsel for Trustee Terry L. Musika (vinc) [EOD 09/30/93][91-5340]
10/8/93	154	Second Request By Trustee Terry L. Musika For Hearing Re: [114-1] Show Cause Order, [113-1] Show Cause Order Complelling Adkins and Butler to Show cause why they should not be incarcerated for failing to comply with Orders of the Court. (vinc) [EOD 10/13/93][91-5430]
10/12/93	155	Motion By Trustee Terry L. Musika to Hold Edward R. Butler in Contempt of Court for Failure to Comply with Subpoena. (vinc) [EOD 10/14/93][91-5430]
12/3/93	156	Second Request By Trustee Terry L. Musika For Hearing Re: [114-1] Show Cause Order, [113-1] Show Cause Order. (vinc) [EOD 12/07/93][91-5430]

EXHIBIT (4) ORDER OF SETTLEMENT

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

IN RE:	*	
	*	
FRANKLIN CORNELIUS SHOWELL	*	
1096-JS	*	Case No.: 90-5-
ELLA AUGUSTA SHOWELL	*	
	*	
Debtors	*	M91-0142 JS
	*	

ORDER AUTHORIZING THE DEBTOR TO INCUR SECURED DEBT AND EXTENDING DATE FOR SETTLEMENT OF COMPROMISE

Upon consideration of the motion of Franklin Cornelius Showell and Ella Augusta Showell, debtors, pursuant to 11 U.S.C. Section 346(c)(2) of the Bankruptcy Code for authority to incur secured debt, after notice of said motion to the twenty largest unsecured creditors, no committee having been formed, and it appearing to the court that the debtors are unable to obtain credit unless a lien is granted against their real property and improvements, and that unsecured credit is not otherwise obtainable, it is this 17 day of July, 1991, by the United States Bankruptcy Court for the District of Maryland

ORDERED that Franklin Cornelius and Ella Augusta Showell, debtors, be, and they hereby are, authorized to incur credit on a secured basis by granting a lien in favor of Harbor Bank

of Maryland against the debtors' real property and improvements on the terms and conditions described in the debtors' motion; it be it further

ORDERED that Franklin Cornelius Showell and Ella Augusta Showell, debtors, be, and they hereby are, authorized to execute all documents necessary to accomplish and settle the Harbor Bank of Maryland loan to Nutter Funeral Homes, Inc., by granting a lien in favor of Harbor Bank of Maryland against the debtors' real property and improvements on the terms and conditions described in the debtors' motion; and be it further

ORDERED that Franklin Cornelius Showell and Ella Augusta Showell, debtors, be, and they hereby are, authorized to grant a lien in favor of Harbor Bank of Maryland against the debtors' real property and improvements on the terms and conditions described in the debtors' motion; and be it further

ORDERED that the date for the settlement between the debtors and Edward R. Butler be, and the same is hereby, extended to and including September 5, 1991.

/s/ James F. Schneider
HONORABLE
JAMES F. SCHNEIDER
UNITED STATES
BANKRUPTCY COURT JUDGE

ENTERED
JUL 18 1991
U.S. BANKRUPTCY COURT
BALTIMORE, MD

cc: Marc R. Kivitz, Esquire
Suite 1330, 301 N. Charles Street
Baltimore, Maryland 21201

A. Grey Staples, Jr., Esquire
Assistant U.S. Trustee
Room G-09, Fallon Federal Building
31 Hopkins Plaza
Baltimore, Maryland 21201

Robert B. Scarlett, Esquire
Suite 401
19 E. Fayette Street
Baltimore, Maryland 21201

EXHIBIT (5) TRANSCRIPT
MOTION TO VACATE ORDER [4/15/91]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

1	Edward R. Butler	*	Case No. 90-5-3087-JS
2	Debtor	*	
3	* * * *	*	* * * *
4	Robert B. Scarlett, Esq.	*	Adversary No.
5	et al	*	91-5430-JS
6	Plaintiff	*	
7	v.	*	101 W. Lombard Street
8	Edward R. Butler	*	Baltimore, MD 21201
9	Defendant	*	April 15, 1992 2:35 p.m.
10	* * * *	*	* * * *

Transcript of Motion Hearing
Before the Honorable James F. Schneider
United States Bankruptcy Court Judge

For Mr. Scarlett:	Robert B. Scarlett, Esq.
For Resolution Trust Corp.	Bowen P. Weisheit, Jr., Esq.
For James C. Adkins	Timothy A. Dixon, Esq.
	Melvin L. Doxcee, Esq.
For Edward R. Butler	Kenneth Warren, Esq.
Audio Operator:	Nancy Walker
Transcript Service:	Monique E. Gibson M.E. G. Typing & Transcription

Proceedings recorded by electronic sound recording. Transcript produced by transcription service

M.E.G. TYPING & TRANSCRIPTION SERVICE
2743 Singer Woods Drive
Abingdon, MD 21009
(410) 515-7036

Proceedings

"Call to order of the Court"

The Clerk: All rise. This Honorable Court now resume its session. Judge James F. Schneider is presiding. Please be seated.

The Court: Good afternoon everyone.

All: Good afternoon your Honor.

The Clerk: Edward R. Butler. Debtor number 90-5-3087: Robert B. Scarlett. Plaintiff. Versus Edward R. Butler. Defendant. Adversary number 91-5430. Hearing today on Court Order, page 5. Gentlemen. Please remain seated. Would you please identify yourself for the record please?

Mr. Scarlett: Robert B. Scarlett on behalf of himself.

Mr. Weisheit: Bowen P. Weisheit, Jr. on behalf of Resolution Trust Corp.

Mr. Dixon: Timothy A. Dixon. On behalf of James C.

Adkins.

Mr. Warren: Kenneth Warren on behalf of Debtor Edward R. Butler.

The Court: Good afternoon again to all of you. The matter before the Court is a hearing on paper number 5. the order directing Edward R. Butler and James Adkins to deposit all monies received from the settlement with Rhema Development Corporation and Franklin and Ella Showell in the

Court's escrow account registry. The order was dated the 18th day of November, 1991, and it was executed by the Honorable L. Edward R. Friends. II. a United States Bankruptcy Judge from the District of West Virginia who sits by designation in the District of Maryland

I'll hear first from the – I suppose I should Characterize you as a claimant. Mr. Scarlett. Should I hear from you first.

Mr. Scarlett: You Honor, I would suggest that the Court consider some of the preliminary motions that are presently in front of you. For example, I believe that there's a motion to intervene by Mr. Weisheit, and there might be other motions. I believe, filed, and that would get the chessboard set up before we move forward.

The Court: Very well. Well. I think what I'd rather do before that is to find out what the status of this is. Where are the parties? A hand delivered motion was

received by the Court before lunch from the defendant. Mr. Butler, to dismiss complaints to turnover certain estate monies to the Court's escrow account.

Mr. Warren: That's correct, you Honor

The Court: And I have not yet seen that.

Mr. Warren: That's a preliminary matter I have the original here that I was directed to bring to the Court. in addition, our motion to vacate the order that the Court

has referred to is also pending before the Court. Set forth in that, your Honor, are several brief arguments. And if I may be brief, Ed --

The Court: Should I hear from the movant on a motion to dismiss before I here from the complaining parties?

Mr. Warren: Well, as I understood it, your Honor --

The Court: Isn't that sort of out of order?

Mr. Warren: -- There was the motion to vacate the Order which, as I understood, the hearing was on the motion, and we have made that argument in addition to the motion which I am incorporating with the motion to vacate. I had several arguments to make --

The Court: Well, are there --

Mr. Warren: -- As to the propriety, as I understood the notice.

The Court: This is filed in an Adversary proceeding, but I prefer to hear from Mr. Scarlett first before I hear from the other side. Mr. Scarlett is the Plaintiff in this case, and I'll hear from the defendant.

Mr. Scarlett: Your Honor --

The Court: And maybe I ought to hear from Mr. Weisheit, but I'll hear from him after I hear from Mr.

EXHIBIT (6) (SUMMARY) CONTEMPT ORDER

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF MARYLAND

IN RE: 3087-JS	*	Case No. 90-5-
Edward R. Butler, conversion	*	(Chapter 7
Debtor	*	from chapter 11)
* * * * * * * *		
Robert B. Scarlett, et al	*	
Plaintiffs	*	
v.	*	Adversary No. 91-5430-JFS
Edward R. Butler, et al	*	
Defendants	*	
* * * * * * * *		

ORDER FOR CIVIL CONTEMPT AND JUDGMENT

Having reviewed the Order of the Honorable L. Edward Friend, Jr. passed in these proceedings on November 18, 1991, and after testimony and argument presented during the April 15, 1992 hearing held before this Court on various Motions of the Defendants to avoid the effect of the said Order, and it appearing that the summary contempt sanctions provided by Bankruptcy Rule

2090(a) are appropriate in this case, it is therefore on this 2nd day of June, 1992,

ORDERED: (1) that the Defendants in this adversary proceedings, Edward R. Butler and James C. Adkins, be and they are hereby held in civil contempt of this court. On or about November 18, 1991, the Honorable L. Edward Friend, Jr., sitting in the United States Bankruptcy Court for the District of Maryland, issued an Order directing the Defendants to deposit all monies received from the settlement of a certain claim against Rhema Development Corporation and Franklin and Ella Showell into this Court's escrow account registry by November 20, 1991. On or about November 22, 1991, the Defendant, James C. Adkins, filed a Motion For Stay of Judge Friend's Order of November 18, 1991. On or about January 24, 1992, the Defendant, Edward R. Butler, filed a Motion to Vacate Judge Friend's Order of November 18, 1991. Hearing on the Defendants' Motions was held before this Court on April 15, 1992. The Defendants, though present in Court, declined to present any testimony or other evidence; and the Defendants' Motions were summarily denied after testimony of the Plaintiff, Robert B. Scarlett, concerning the circumstances surrounding the issuance of Judge Friend's Order of November 18, 1991. The Defendants have failed to replace the funds which this Court finds were improperly appropriated from the Debtor's Bankruptcy Estate, to the detriment of the creditors, in disregard of the Order of Judge Friend entered in this proceeding over six months ago.

(2). Judgment in the amount of Three Hundred Fifty Thousand Dollars ($350,000), with interest from November 20, 1991 to the date all sums are deposited into the escrow registry of this Court as required by the said Order of Judge Friend, together with all reasonable costs and expenses of enforcing compliance with the said Order, including the attorney's fees and all costs of these proceedings, be and the same is hereby entered against the Defendants, jointly and severally.

/s/ James F. Schneider
HONORABLE
JAMES F. SCHNEIDER
UNITED STATES
BANKRUPTCY COURT JUDGE

ENTERED
JUN 02 1992
U.S. BANKRUPTCY COURT
BALTIMORE, MD

cc: Robert B. Scarlett, Esquire
Henson and Scarlett
19 East Fayette Street, Suite 401
Baltimore, Maryland 21201

Meldon S. Hollis, Jr. Esquire
Hollis & Associates, P.A.
111 South Calvert Street
Suite 2700
Baltimore, Maryland 21202
Attorney for Edward R. Butler

Edward R. Butler
7215 Croydon Road
Baltimore, Maryland 21207

Timothy Dixon, Esquire
Leftwich, Moore & Douglas
Suite 1100

1133 Fifteenth Street, N.W.
Washington, D.C. 20005-3922
Attorney for James C. Adkins

James C. Adkins
1776 Verbena Street, N.W.
Washington, D.C. 20012

Terry Musica
C.W. Amos
2 North Charles Street
Suite 210
Baltimore, MD 21201
Chapter 7 Trustee

Office of the U.S. Trustee
Fallon Federal Building
31 Hopkins Plaza, Room G-13
Baltimore, Maryland 21201

Marc J. Lipchin, Esquire
Frank, Bernstein, Conway, and Goldman
300 East Lombard Street
Baltimore, Maryland 21202

Kenneth Xavier Warren, Esq.
Hollis & Associates, P.A.
Suite 720
201 North Charles Street
Baltimore, MD 21201

Bowen P. Weisheit, Jr., Esquire
1406 Fidelity Building
210 North Charles Street
Baltimore, MD 21201
Attorney For The Resolution Trust Corporation

CONTEMPT.ORD
030492:197043

EXHIBIT (7) INABILITY TO COMPLY TRANSCRIPT

the Court's Registry almost three years ago.

THE COURT: So it is in the Registry of the Court?

MR. WILDBERGER: Your Honor, that is correct.

THE COURT: And obviously, clearly, the Trustee knows about it.

MR. OESTREICHER: Yes. The Trustee. It's part of the Court Order that Judge Schneider entered an Order directing Mr. Scarlett to return the money. I don't know if it was ever established that that was part of the 350, but whatever, it was a payment made by Mr. Butler in response to Mr. Scar' lett's request --

THE COURT: Yeah.

MR. OESTREICHER: -- that Mr. Butler return the money. Mr. Butler came in, gave Mr. Scarlett a check for $19,000, and then Mr. Scarlett eventually put the money back into the Registry of the Court, and eventually it was turned over to the Trustee as part of the bankruptcy estate and that's the end of the story. So that's the $19,000 question.

THE COURT: Okay. So, you know, I was none aware, Mr. Butler, there's any disputed issued of fact about that $20,000; it dosen't sound like there is. And it sounds like maybe, indeed – maybe, indeed, in order to comply with Part A of the Court's Order, if you came up with only $330,000, that would purge you of the contempt. But that's just not realistic, Mr. Butler, unless you surprise me beyond all belief,

because I'm satisfied that your assets are limited, but I don't know. That's something that's open, because nobody knows.

Mr. Butler: Well, can we at this point then, if we're going to proceed on it today, I have a doctor's slip saying, dated the 2nd, so it won't be piggy backing Adkins, stating what my medical conditions are, but that's not an issue at this point. We'll solve that in a moment.

I have a doctor's letter that I had on the day I was here, but I didn't get a chance to finish my testimony, stating my medical conditions also. But, anyhow, we're not getting to that right now. My question right now is this, because it might get it solved, okay?

THE COURT: Yeah.

MR. BUTLER: So that we all can just move on. Mr. Musika has stated on Page 49 of the document of November 17th, that he's only interested in my ability to pay. As we did for Father Miller, can we stipulate today that that's what he needs to testify to: that I either have the money, or I don't have the money, and we can move on that today? If he could just stipulate to what he's already stated. What he's already stated was what he wanted. On page 49, I think it's the fifth line from the top. He stated also --

THE COURT: Mr. Butler, I think you better focus on what the Court ordered you to do, because you know, and all

EXHIBIT (8) SCARLETT NOTICE TO CREDIT 10/17/91

DOCKETED 11/4/91

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

IN RE: EDWARD R. BUTLER, 9087-JS Debtor	Case No. 90-5- (Chapter 11)
IN RE: RHEMA DEVELOPMENT 1097-SD CORPORATION, Debtor.	Case No. 90-5- (Chapter 11)
IN RE: FRANKLIN AND 1096-SD ELLA SHOWELL, Debtor.	Case No. 90-5- (Chapter 11)
EDWARD R. BUTLER, Movant, v. M91-0142 M91-0143 RHEMA DEVELOPMENT CORPORATION,	Motions No. and

and *

*

FRANKLIN AND *

ELLA SHOWELL, *

Respondents. *

* * * * * * * * * *

*

NOTICE OF SETTLEMENT WITH RHEMA DEVELOPMENT CORPORATION AND FRANKLIN AND ELLA SHOWELL

NOTICE IS HEREBY GIVEN, that the Debtor, Edward R. Butler, has entered into a Settlement Agreement with Rhema Development Corporation and Franklin and Ella Showell (hereinafter collectively referred to as the "Defendants"). The focus of the Settlement Agreement is to settle the claim that the Debtor has in the ownership of the funeral home known as Nutter and Sons Funeral Home. The Debtor filed a Motion seeking relief from the automatic stay in both the Rhema Development Corporation bankruptcy proceeding and the Franklin and Ella Showell bankruptcy proceeding, as set forth above. The basis of the Motion was to request the Bankruptcy Court to lift the automatic stay in order to allow the Debtor to proceed in the Circuit Court for Baltimore City and obtain a proceed in the Circuit Court for Baltimore City and obtain a determination from said Court as to its perfected interest in certain stock he held as security for the Debtor's interest in the funeral home known as Nutter and Sons Funeral Home.

The Defendants offered to settle the Motion to Lift the Automatic Stay for a payment, over time, of Three Hundred Fifty Thousand Dollars ($350,000), which last payment was supposed to

be made, after an extension provided by the Bankruptcy Court and the Debtor, on October 1, 1991. A copy of the Notice of Settlement issued in the Defendants' bankruptcy proceedings is attached hereto as an Exhibit. It should be noted that James Adkins entered into an Agreement with the Debtor to fund the Debtor's litigation in consideration for some interest in Nutter and Sons Funeral Home, Inc. THE Bankruptcy Court was made aware of the fact that there was such an agreement on the date of the lift stay hearing. Until the agreement between James Adkins and Edward Butler has been reached, all settlement funds received by the Debtor's estate will be segregated into a separate escrow account.

A copy of the Settlement Agreement can be found in the Defendant's bankruptcy proceedings and has been filed with the United States Bankruptcy Court for the District of Maryland, 101 West Lombard Street, Baltimore, Maryland 21201. The files may be reviewed from Monday through Friday, excluding Court holidays, between 9:00 A.M. and 4:00 P.M. Further information may also be obtained from the undersigned.

Any creditor or interested party wishing to object to the proposed settlement shall file an objection with the Clerk, United States Bankruptcy Court, 101 West Lombard Street, Baltimore, Maryland 21201, within twenty (20) days from the date of this Notice. A copy of the objection should be mailed or delivered to Robert B. Scarlett, Esquire, Heneson and Scarlet, 19 East Fayette Street, Suite 401, Baltimore, Maryland 21202. All objections must set forth, with specificity, the factual and legal grounds upon which they are based. The Court may approve the settlement without

further order or notice if no objections are filed. If one or more objections are filed, the Court, in its discretion, may conduct a hearing on the settlement or may make a determination with respect to the settlement without a hearing. If one or more objections are filed, and a hearing on the objection or objections is scheduled, the objecting party will be required to appear at such hearing.

All persons and entities receiving notice hereof will be bound by the decision of the Court with respect to the settlement between the Debtor and the Defendants.

/s/ Robert B. Scarlett
Robert B. Scarlett, Esquire

HENESON AND SCARLETT
Suite 401, 19 E. Fayette St.
Baltimore, Maryland 21202
(301) 539-5505

Dated: October 17, 1991

EXHIBIT (9)
CHAPTER 11 MONTHLY INTERIM FINANCIAL REPORT

IN RE:	*	Case No. 90-5-3087-JS
EDWARD R. BUTLER	*	INTERIM FINANCIAL REPORT No. _____
Debtor	*	9/11/91 through 9/30/91
	*	Petition Filed: _____

* * * * * * * * * * *

SUMMARY OF CASH TRANSACTIONS

A. GENERAL EXPENDITURES:

Groceries	400.00	
Automobile Expenses	1,100.00	
Child Expenses	3,200.00	
Mortgages / Rent		
Medical Expenses	175.00	
Insurance – Life, Auto, Medical		
Utilities	370.00	
Educational Expenses	College & living expenses daughter	
Sundry Expenses	300.00	
Other: Itemize	_____	
_____	_____	
_____	_____	
TOTAL GENERAL EXPENDITURES:		5,545.00

B. ADMINISTRATIVE DISBURSEMENTS:

Accountant Fees		
Appraiser Fees		
Trustee Fees	150.00	
Attorney Fees		
(per Order of Court)		
TOTAL ADMINISTRATIVE DISBURSEMENTS:		150.00

C. DEBTOR-IN-POSSESSION ACCOUNTS:

	Bank Name	Account No.	Type of Account	Balance
1.	John Hanson		Checking	
2.	Signet Bank	0562147	Checking	
3.				

D. INCOME:

Regular Wages	3,000.00	
Other Income	1,000.00	
Petty Cash	_____	
TOTAL INCOME:		4,000.00

E. SUMMARY:

Beginning Bank Balance	1,500.00
Total Income	5,500.00
Total Expenditures	5,695.00

Net Income or (Loss) (195.00)

F. Status of insurance coverage, payment and proof of income of premiums. (Attach copies of home and automobile insurance cover sheet and proof of payment.)

DATE: 10/17/91

/s/ Edward Butler
Debtor-in-Possession
Edward Butler/ LS

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

IN RE:	*	
EDWARD BUTLER 3087-JS	*	Case No. 90-5-
Debtor	*	(Chapter 11)

* * * * * * * * * *

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of October, 1991, a copy of the Interim Financial Report of the above captioned Chapter 11 Debtor-in-Possession for the period of September 1, 1991 through September 30, 1991 was mailed to the Special Procedures Section of the Internal Revenue Service, P.O. Box 1076, Baltimore, MD 21203; and to the U.S. Trustee's Office, 31 Hopkins Plaza, Baltimore, MD 21201.

Respectfully submitted,

/s/ Robert B. Scarlett
Robert B. Scarlett, Esquire

HENESON AND SCARLETT
19 East Fayette Street, Suite 401
Baltimore, Maryland 21202
(301) 539-5505

EXHIBIT (10) ILLEGAL ENHANCEMENT UNDER APPRENDI

Adjustment for Obstruction of Justice

6. I have no information to suggest that the defendant impeded or obstructed justice during the course of the criminal case. The government, however, states that Butler was found in contempt twice and ordered incarcerated by the Bankruptcy Court. The government states "Ultimately, the contempt order and sanction of incarceration entered by Bankruptcy Judge James Schneider was upheld by United States District Judge Walter E. Black, Jr. Judge Black provided Butler the opportunity to purge himself of contempt by fully testifying about the disposition of the funds in question. Unknown to Judge Black, the defendant testified falsely. Judge Black ruled that he had purged the contempt, and the defendant was never incarcerated.

Adjustment for Acceptance of Responsibility

7. Mr. Butler proceeded to trial and contested the charges in the indictment. He has not made any statement to me acknowledging his criminal responsibility.

Offense Level Computations

8. Count I – 18 U.S.C. § 185

According to Appendix A of the U.S. Sentencing Guidelines Manual, the guideline for a violation of 18 U.S.C. § 152 can be found under § 2B4.1, which is titled Bribery in Procurement of Bank Loan and Other Commercial Bribery, §2F1.1, which is titled Fraud and Deceit; Forgery; offenses involving altered or counterfeit instruments other than counterfeit bearer obligations of the United States, and § 2J1.3, which is titled Perjury or Subordination or Perjury; Bribery or Witness. As the offense involves False Statement in a Bankruptcy Proceeding in an attempt to hide the proceeds of a business transaction, specifically $350,000, §2F1.1 appears to be the appropriate guideline.

9. **Base Offense Level:** The base offense level under §2F1.1 for Fraud and Deceit is six § 2F1.1(a).

6

10. **Specified Offense Characteristic:** The base offense level is increased by an additional eight levels as the object of the fraud was the concealment of a $350,000 settlement. § 2F1.1(b)(1)(I).

8

11. **Specific Offense Characteristic:** The base offense level is increased by an additional two levels as the offense

involved more than minimal planning. § 2F1.1(b)(2)(A).

2

12. Pursuant to Application Note 1(f) of § 1B1.1, "More than minimal planning exists if significant affirmative steps were taken to conceal the offense other than conduct to which § 3C1.1 (Obstructing or Impeding the Administration of Justice) applies". In this case, the defendant took a series of steps to conceal the $350,000 settlement.

13. **Specific Offense Characteristic:** The base offense level is increased by an additional two levels as the fraud was a violation of a judicial order of the Bankruptcy Court. § 2F1.1(b)(4)(B).

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14. **Adjustments for Role in the Offense:** The offense level is increased by an additional two levels for abuse of position of trust. § 3B1.3.

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15. The defendant committed the instant offense while he was a "debtor-in-possession" which, under the Bankruptcy Law indicates that he is his own trustee and responsible to the Bankruptcy Court in the same manner as a court-appointed trustee.

16. **Victim-Related Adjustment:** None.

0

17. **Adjustment for Obstruction of Justice:** None.

0

18. The defendant may have committed obstruction of justice during the course of the bankruptcy proceedings; however, I'm not aware that he committed or obstructed justice during the course of the criminal proceedings.

19. **Adjusted Offense Level (Subtotal):**

20

20. Counts II through IV are grouped pursuant to § 3D1.2(d) as the offense level is determined largely on the basis of the total amount of harm or loss. The base offense level for a violation 18 U.S.C. §1957 is found in

21. **Base Offense Level:** The base offense level for a violation of 18 U.S.C. § 1957 is found in § 2S1.2 of the guidelines. This section provides that offenses involving Engaging in Monetary Transactions and Property Derived from Specified Unlawful Activity, have a base offense level of 17. § 2S1.2(a).

17

22. **Specific Offense Characteristics:** The base offense level is increased by an additional two levels as the defendant knew that the funds were the proceeds of a specified unlawful activity other than the manufacture, importation, or distribution of narcotics or other controlled substances. § 2S1.2(b)(1)(B).

2

23. **Specific Offense Characteristics:** Since the total amount of the funds transacted ($150,000) exceeds $100,000, the best offense level is increased as specified in the Table in § 2S1.1(b)(2). Since the amount of the transaction was more that $100,000, but less than $200,000, the base offense level is increased by one level. § 2S1.1(b)(2)(B).

1

24. **Role in the Offense:** None.

0

25. **Victim Related Adjustment:** None.

0

26. **Adjustment for Obstruction of Justice:** None.

0